



fidh

The United Nations Counter-Terrorism Complex

Bureaucracy, Political Influence and
Civil Liberties



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EXECUTIVE SUMMARY

The United Nations' ability to counter terrorism is a test for its future relevance as the threats posed by the rise of non-state terrorist groups have challenged the UN's **raison d'être** to maintain international peace and security. The fight against terrorism has become a key priority of the international community and has garnered unprecedented levels of cooperation amongst member states, demonstrated by the hydra-headed complex of UN bodies and entities tasked with counter-terrorism related issues.

FIDH's new report looks into the counter-terrorism complex at the United Nations in order to better understand the massive structure that has developed over the last two decades, the corpus of measures and programs it has been generating and their impact on both the enjoyment of human rights and the effectiveness of counter-terrorism at the national and regional levels

UNITED NATION'S RESPONSIBILITY TO COUNTER TERRORISM

The UN as a norm setter and convener has the responsibility for ensuring that human rights are centralized in all counter-terrorism activities, from gap analysis and technical assistance, to capacity building. In that respect, it has made human rights a central principle of its Global Counter-Terrorism Strategy under Pillar IV. However, despite this commitment, the UN is at a critical juncture. The UN is faced with the major risk that the authoritarian states that occupy or have a strong influence in key positions in this structure may have the non-human rights compliant counter-terrorist policies, already applied in their own territories, endorsed by the international community and replicated widely.

In the current counter-terrorism architecture, efforts are conducted in competing silos of subsidiary organs of the Security Council (UNSC) and the General Assembly (UNGA) that often overlap in their programs and activities. This silo mentality is mainly driven by the fundamental division over which each body is ultimately responsible for countering terrorism. The General Assembly claims to be the competent organ to deal with terrorism because of its universal membership, whereas the Security Council is responsible for maintaining peace and security, which obviously includes countering terrorism. Fundamentally, the UNSC and the UNGA bodies have different mandates when it comes to counter-terrorism. In theory, Security Council bodies such as the Counter-terrorism Committee (CTC) and its Executive Directorate (CTED) are responsible for assessing needs and providing analysis for technical assistance to member-

states, whereas General Assembly bodies such as the Counter-Terrorism Implementation Task Force (CTITF) entities are responsible for coordinating and capacity building. In practice though, this bifurcated system actually results in a competition for resources, influence, and project ownership amongst the two branches.

UN COUNTER-TERRORISM “REFORM”

Member States, frustrated by the current state of counter-terrorism work at the UN and confused by its tentacular structure and multiplicity of bodies, requested the Secretary General in the latest review of the UN Global Counter-Terrorism Strategy (GCTS), to develop a proposal on how best to implement that strategy across all four pillars, including Pillar IV focused on ensuring the protection of human rights. The SG’s report proposed the creation of a new Office of Counter-Terrorism (OCT) to be headed by an Under Secretary General, that would take the CTITF and the UN Counter-Terrorism Centre (UNCCT) out of the Department of Political Affairs (DPA) and put them under the OCT, which was officially established in June 2017.

Effective counter terrorism operations at the UN would be best delivered by mainstreaming counter-terrorism responsibilities into fewer bodies that have the independence to conduct evaluations of states and provide recommendations or with an overarching coordinating body to eliminate silos. The creation of the OCT could have fulfilled that objective. However, it remains unclear how the new Office, whose Head was selected by the Russian Federation, will effectively overcome the many challenges pertaining to coordination and resources, the increase of civil society involvement, and the centralization of the protection of human rights in all counter-terrorism efforts.

Given that CTITF and UNCCT will remain intact, with their staff, mandate and own resources, and that the terms of reference of the Office provide no details regarding its interaction with Security Council bodies such as CTED, the OCT may be seen as a mere cosmetic addition that will not adequately overcome the structural deficiencies.

Over the last decade, member states and UN entities have developed a variety of programs and taken action through binding and non binding resolutions to counter and prevent terrorist acts focusing on thematic issues such as facilitating international judicial cooperation, monitoring NGOs for foreign terrorist financing, denying safe havens for terrorist actors, developing effective criminal justice systems, and creating PVE National Action Plans, among others. Nevertheless, no entity in the UN counter-terrorism structure has developed effective tools for monitoring and evaluating the impact of their activities. To date, the UN has not conducted any evaluation of the human rights compliance of its activities and programs. Similarly, UN bodies do not

have the human and financial resources to conduct efficient evaluation on the effect of their recommendations, such as CTED's lack of capacity to follow up on the implementation of their recommendations on all country visits.

This, coupled with the lack of publicly available information regarding UN counter-terrorism activities, and the lack of transparency of certain decision-making processes that take place under little to no scrutiny, is raising serious questions. For example, why are country visits taken by the CTC/CTED not transparent in their planning, implementation and reporting? Only recently the schedule and composition of some visits was made available after the visit actually took place. If the plans were published ahead of time, it would allow for the delegation to extend their contacts and interact with local civil society. The publication of assessments and recommendations following the country visits would allow for a better assessment of whether human rights concerns have been brought up during meetings with official and governmental authorities.

Furthermore, CTITF and UNCCT remain opaque regarding how programs are ultimately selected, funded and implemented, what the Advisory board's priorities are, how entities coordinate in practice, and how they assess their impact.

In order to remedy this situation, the first priorities of the newly-established OCT should be to conduct an assessment of structural overlaps and duplication and conduct systematic evaluations of the Office's effectiveness and impact of UN counter-terrorism measures and programs, including its human rights impact.

HUMAN RIGHTS SHOULD BE CENTRALIZED IN ALL UN COUNTER-TERRORISM ACTIVITIES

The UN enshrined the protection of human rights in counter-terrorism efforts in Pillar IV of the GCTS, but in practice, human rights in the context of the UN's counter-terrorism work is most often minimized to a generic line in a resolution, reduced to a few questions on a country visit survey, comprised of a small staff sprinkled throughout the Secretariat and Security Council bodies, securitized in the PVE agenda and under-funded in its programming.

Human rights experts within the UN Counter-Terrorism complex are scattered throughout a variety of mechanisms with overlapping mandates, though the responsibility to conduct human rights programs and provide oversight is principally shouldered by the Office of the High Commissioner for Human Rights (OHCHR), which does not have sufficient resources and support.

As the debate concerning terrorism became more complex with the introduction of the prevention of Violent Extremism, the line between what is a dissenting voice, extremist narrative and terrorist incitement is further blurred. In the absence of a universally agreed upon legal definition of terrorism and extremism, and an obligation to take “**all necessary measures**”^{*} to combat them, states may be tempted to craft their own overly broad definitions that can be exploited for unrelated offenses and further human rights abuse.

Full respect of freedom of assembly, opinion, speech and peaceful demonstration and the right to use the media are essential to the action of civil society, and yet, they are being threatened. Increasingly throughout the world, authorities are restricting the freedom of civil society and do not hesitate to adopt laws that increasingly kill these freedoms, by building up administrative barriers that prevent civil society organizations from operating, restricting NGOs access to funding, especially foreign funding, limiting their right to register, organizing checks on associations’ activities, or restricting their freedom of peaceful demonstration or gathering. As underlined by the Special Rapporteur on Counter-Terrorism and Human Rights, national and international counter-terrorism measures have “enabled Governments to clamp down on NGOs using counter-terrorism and national security to provide a veil of legitimacy for the suppression of legitimate human rights and humanitarian initiatives”.^{**}

A SHRINKING SPACE FOR CIVIL SOCIETY AND POLITICALLY VITAL SPACE FOR STATES

Our organizations have been documenting and denouncing the rapidly shrinking space of civil society at national, regional, and international levels. Even though member states have been tasked through multiple resolutions to engage with civil society, a vital partner, as well as a regulator, in counterterrorism efforts, the current UN counter-terrorism architecture does not provide any mechanism for meaningful engagement with civil society actors, including independent human rights organizations. States are increasingly calling for cooperation with civil society on countering terrorist narratives, as requested by the Comprehensive International Framework to Counter Terrorist Narratives, and to address “conditions conducive to terrorism” in the context of the PVE Plan of Action. However, this has yet to materialize.

This is all the more preoccupying as we observe that the UN’s counter-terrorism architecture is heavily influenced by states that have a poor record of protecting human rights while countering terrorism. As detailed in the report, FIDH has identified states that exert influence by holding high level positions in key counter-terrorism entities. These include:

^{*}Paragraph 5, S/RES/2249 (2015)

^{**}Promotion and protection of human rights while countering terrorism, 18 September 2015, A/70/371

Russia who selected the candidate for the position of Under-Secretary General of the Office of Counter-Terrorism, but already holds many key positions within the architecture. Russia does not have experience developing and implementing counter-terrorism policies that are human rights compliant and has adopted draconian measures that violate fundamental freedoms through overly broad definitions of terrorism and extremism.

Saudi Arabia has positioned itself as a leader and influencer by creating the United Nations Counter-Terrorism Centre (UNCCT) with a founding donation of \$110 million dollars, where it doubles as the head of the Advisory Board that directs the UNCCT's priorities and activities. Using "terrorism and extremism" as a justification for its leadership, Saudi Arabia may be deemed hypocritical, as some argue that the Kingdom has materially and ideologically given rise to terrorist actors. While Saudi Arabia aims to combat some forms of terrorism, it is also seen as contributing to its spread.

Egypt who has passed the most repressive laws against civil society organizations and put thousands of political activists in jail over the last four years for counter-terrorism purposes, is chairing the UNSC Counter-Terrorism Committee (CTC) until 2018. As Chair of the CTC, Egypt has successfully crafted a counter-terrorism measure, the International Comprehensive Framework to Counter Terrorist Narratives, that serves its domestic interests. The framework was successfully ideated during its presidency, requested in its presidential statement, supervised as the chair of the CTC, and voted for in its position on the Security Council.

To a lesser extent, **the United States** who has been the main proponent of Countering Violent Extremism paved the way for the welcoming of the Preventing Violent Extremism agenda at the UN, which in practice effectively securitizes human rights and development work and has been rejected in the US from the communities it seeks to partner with. Similarly, **France**, another permanent state of the UNSC, has continuously extended its state of emergency without effective parliamentary oversight and without demonstrating its effectiveness. Instead, the state of emergency has achieved serious violations of individual rights as well as a setback to the rule of law.

Many of the actors that lead counter-terrorism entities are also members of a regional security cooperation known as the Shanghai Cooperation Organization(SCO) that seeks to battle the Three evils of "terrorism, separatism, and extremism." FIDH has extensively documented human rights abuses committed in the SCO framework since 2009, which the UN's increasing regional cooperation effectively endorses. The UN should re-evaluate its modes of regional cooperation, not only with the SCO, but with other institutions as well, in order to promote human rights compliant counter-terrorism activities.

Finally, in this report, FIDH decided to look into five specific UN counter-terrorism priorities and the human rights impact of their implementation, in country-specific situations (China, Egypt, France, Mali, Russia, Tunisia, and the United States) through counter terrorism financing, PVE, UN regional cooperation, rule of law capacity building, and terrorist narratives and information and communication technology. These priorities are most often translated into draconian domestic laws and materialized in the mass repression of dissenting voices, from journalists to human rights activists and political opponents to the stigmatization of entire religious groups or social communities, that may in return, generate more terrorist acts.

The United Nations Counter-Terrorism complex, with its newest reform to create the OCT, has the potential to enter into a more effective, impactful, and human rights compliant chapter. However, this will only be realized with more involvement from civil society, more transparency of its activities, and increased scrutiny from all Member States.

ABBREVIATIONS

1267MT - 1267 Monitoring Team

CTC - Counter-Terrorism Committee

CTITF - Counter-Terrorism Implementation Task Force

CTED - Counter-Terrorism Executive Directorate

DPKO - Department of Peacekeeping Operations

DPKO-OROLSI - Department of Peacekeeping Operations Office of Rule of Law and Security Institutions

GCTS - Global Counter Terrorism Strategy

GCTF - Global Counter-Terrorism Forum

I-ACT - Integrated Assistance on Countering Terrorism

ICT - Information and Communications Technologies

OCT - Office of Counter-Terrorism

OHCHR - Office of the High Commissioner for Human Rights

PGA - President of the General Assembly

PVE - Preventing Violent Extremism

UN - United Nations

UNCCT - United Nations Counter-Terrorism Centre

UNDP - United Nations Development Program

UNESCO - United Nations Educational, Scientific and Cultural Organization (UNESCO)

UNGA - United Nations General Assembly

UNICRI - United Nations Interregional Crime and Justice Research Institute (UNICRI)

UNODC - United Nations Office on Drugs and Crime

UNODC-TPB - United Nations Office on Drugs and Crime Terrorism Prevention Branch

UNSC - United Nations Security Council

UNRCCA - United Nations Regional Centre for Preventive Diplomacy for Central Asia

UNWOMEN - United Nations Entity for Gender Equality and the Empowerment of Women

SCO - Shanghai Cooperation Organization



INTRODUCTION

"Whoever fights monsters should see to it that in the process he does not become a monster" - Nietzsche

"Quis custodiet ipsos custodes? // Who will guard the guardsman?"- Juvenal

The fight against terrorism has been at the forefront of our global geopolitical order for the past two decades, particularly marked by the attacks on September 11th, 2001, that demonstrated the horror and atrocities committed in the name of establishing terror. The period following the attacks on 9/11 was marked by unprecedented levels of security cooperation amongst states, from the invocation of Article 5 of the NATO treaty of mutual assistance that led to the invasion of Afghanistan to the unanimous adoption of Resolution 1373 (2001) under Chapter VII of the United Nations charter that imposed new counter-terrorism requirements on every country. Countering "terrorism," still a legally undefined term, has been a unifying force amongst states, bound by the premise that no country is immune to the scourge of "terrorism" and that "terrorism" is not defined by any race, religion, or culture. This unanimous international support is best illustrated by the plethora of counter-terrorism resolutions adopted by consensus by the UN Security Council and General Assembly over the last 15 years.

Attacks carried out by terrorist groups such as ISIL (Da'esh), Boko Haram, Al-Qaeda, Al-Shabaab and affiliated groups and individuals have cost thousands of lives around the globe and are expected to occur even more frequently. Attacks against innocent civilians in public squares, places of worship, transit, restaurants, nightclubs, among many others, take place in both situations of conflict and peace, against people of all races and creed, in violation of their most fundamental freedoms and human rights. Yet, most perpetrators continue to enjoy impunity as very few are actually prosecuted or prosecuted according to fair trial standards. All the while, the rights of victims of terrorism to justice and reparations are mostly denied.

Since 9/11 and the beginnings of the "War on Terror," the threat posed by terrorist actors has evolved with the rise of Da'esh and spread of Al-Qaeda affiliate groups across the globe that have developed new tactics to carry out attacks, changing the international community's strategy to prevent and manage conflicts. It may be understandable that in order to ensure the security of the nation and keep their citizens safe states may resort to temporary emergency measures conferring exceptional powers to the Executive and infringing fundamental freedoms for a limited period of

time. However, the shadow of the “War on Terror” and the more recent fears of an escalating terrorist threat have led to a serious regression of human rights and fundamental freedoms that ultimately contradict the goals of the fight against terrorism. Many states have adopted powerful and permanent draconian measures in the name of countering terrorism and extremism that have in turn legitimized the repression of dissenting voices, human rights defenders, civil society organizations, and stigmatized communities. The lack of accountability for those responsible for serious human rights violations in the context of countering terrorism and extremism may fuel grievances that terrorists will exploit.

FIDH and its member organizations have been fighting back to protect human rights in the fight against terrorism. We have taken action against overextended states of emergency, unlawful forms of surveillance, arbitrary detention and arrests, acts of torture and the silencing of dissenting voices and civil society in the name of national security. We have represented victims who have been violated by terrorist actors and victims who have been violated in the context of countering terrorism. But in the recent years we have also seen the issue of “terrorism” increasingly crosscut all of FIDH’s areas of focus. Back in 2005 FIDH published a report on “Counter-Terrorism versus Human Rights: The Key to Compatibility” which already identified and detailed the most disturbing and repeated violations committed in the immediate aftermaths of 9/11 such as :

“arbitrary detentions, torture, violations of the right to life, of the right to a fair trial by an impartial and independent tribunal, violations of the right to freedom of expression, private life and property, or refoulement of asylum seekers and expulsion of migrants suspected of taking part in terrorist activities to countries where they may face torture or cruel, inhumane or degrading treatment.”¹

The United Nations was created to maintain international peace and security and has a vital role to play in countering and preventing terrorism with its convening and norm-setting power. The threat posed by non-state terrorist actors demands a robust response that the UN is best positioned to lead. After the attacks on 9/11, the Security Council adopted resolution 1373 (2001) under Chapter VII of the UN Charter. This unique resolution was the first legally binding Chapter VII resolution that applied to all UN membership as opposed to previous counter-terrorism efforts that were only valid if the state had voluntarily signed the relevant international treaty. Resolution 1373 (2001) required that all member states were responsible to report their progress on its implementation to the newly created Counter-Terrorism Committee (CTC) in order assess state implementation and facilitate technical assistance, at the request of a member state.

1. FIDH: Counter-Terrorism Measures and Human Rights, Keys for Compatibility - October 2005 report available: <https://www.fidh.org/en/issues/terrorism-surveillance-and-human-rights/Counter-Terrorism-Measures-and-Human-Rights>

However, Resolution 1373 (2001), adopted in a meeting that lasted for three minutes according to official minutes, failed in two regards.² It failed to mention how these measures must comply with human rights and failed to define “terrorism.” Human rights language was only introduced two years later on January 20, 2003 through the UNSC resolution 1456 (2003). Resolution 1456 (2003) required that states,

*must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law;*³

In a speech given by former Secretary-General Ban Ki Moon on the 10th anniversary of the attacks on September 9, 2001, he stated that:

*Human rights are an intrinsic part of the fight against terror, not an acceptable casualty of war. Security and human rights are not irreconcilable ends of a spectrum, but entirely complementary. The prohibition on torture, fair trials, respect for fundamental freedoms - these are cherished values of human civilization that must not be compromised.*⁴

Current Secretary General Antonio Guterres has shared this opinion in his remarks at a High Level Dialogue to Implement the Global Counter-Terrorism Strategy in Central Asia by stating that:

*Upholding the rights of freedom of expression, association and peaceful assembly in this region are fundamental to countering the threat that violent extremism poses. Acknowledging and respecting people's dignity and rights - including their frustrations and critical opinions - helps to combat extremism, by building social cohesion and a sense of the common good.*⁵

Since then, it has become increasingly acknowledged that human rights and counter-terrorism are mutually reinforcing and complementary, but in practice the promotion and protection of human rights has been a mere afterthought to counter-terrorism activities and recent counter-terrorism resolutions demonstrate a weakening of human rights language in counter-terrorism measures that are adopted.

2. The meeting began at “10:50 p.m., adjourned at 10:53 p.m” on September 28th. “Security Council Unanimously adopts wide-ranging anti-terrorism resolution; calls for suppressing financing, improving international cooperation.” <http://www.un.org/press/en/2001/sc7158.doc.htm>

3. UNSC Resolution 1456, Article 6, available here <http://www.un.org/Docs/scres/2003/sc2003.htm> and here <http://www.refworld.org/docid/3f45dbdb0.html>

4. Ban Ki Moon, Speech on September 11th, 2011, <http://www.un.org/sg/STATEMENTS/index.asp?nid=5522>

5. UN Secretary-General's remarks at High-level Dialogue on Implementing the UN Global Counter-Terrorism Strategy in Central Asia available at: <http://www.unicbeirut.org/printunsg.asp?id=3406>

This gap between acknowledgement and practice is demonstrated by the fact that the international community has never successfully agreed upon a universally accepted legal definition of terrorism (the debate concerning a draft comprehensive convention on terrorism with a universal definition remains deadlocked in the General Assembly and thus “terrorism” is up to flexible national interpretation). Now, the global debate on the concept of “terrorism” has evolved to encompass the broader need to prevent “violent extremism,” an even less legally defined concept, first introduced as “Countering Violent Extremism” by the United States under President Obama.

The notion of Preventing Violent Extremism (PVE) was built on the notion that terrorism cannot be addressed purely through military means and requires a softer approach focused on tackling root causes by grounding counter-terrorism efforts in development and human rights in partnership with communities. Eventually this concept was enshrined and welcomed in counter-terrorism efforts at the UN with the previous Secretary General Ban Ki Moon’s Plan of Action to Prevent Violent Extremism. Ban Ki Moon once referred to Violent extremism as “the scourge of our times,”⁶ except just like “terrorism,” “violent extremism” is legally undefined and even broader in scope allowing for even more vague national interpretation. For example, in Russia and China, charges of “extremism” have been a convenient charge used against dissenting voices, political opposition, and human rights defenders. In the United States, the Countering Violent Extremism (CVE) programs have cast suspicion and targeted Muslim Americans while creating a powerful tool of community surveillance. The future of CVE under the Trump Administration solely targets the Muslim community while failing to address white supremacists extremists. The PVE agenda threatens to co-opt community-lead human rights and development work by subsuming it into the framework of preventing violent extremism instead of valuing communities, human rights, and development for its inherent value.

Since 2001, the numerous resolutions adopted by the Security Council and the General Assembly have ended up creating a hydra headed architecture of bodies that cover an ever widening scope of issues pertaining to counter-terrorism and prevention of “violent extremism.” This large structure, with sometimes overlapping mandates and never-ending acronyms is an enigma for most, including for many member states and those who work in it.

FIDH’s new report looks into the counter-terrorism complex at the United Nations in order to better understand the massive structure that has developed over the last two decades, the corpus of measures and programs it has been generating and their impact on both the enjoyment of human rights and the effectiveness of counter-terrorism at the national and regional levels.

6. A/70/675 Letter dated 22 December 2015 from the Secretary-General to the President of the General Assembly

This report also demonstrates that the rapid escalation and blind approval of counter-terrorism policies has created new vehicles for human rights violations in the name of countering “terrorism” and “extremism.” All of the UN’s counter-terrorism efforts must be evidenced based and comply with international law including human rights law. FIDH offers recommendations for all stakeholders involved including member states and UN entities on how the United Nations should better ensure the promotion and protection of human rights in its counter-terrorism efforts.



METHODOLOGY

FIDH undertook research on the UN Counter-Terrorism architecture for this report from March 2016 to September 2017. This report has been prepared by Stephanie David, FIDH Representative to the UN and Head of New York Office, and Bailey Theado, FIDH-Consultant with the cooperation of FIDH member organizations working on China, Russia, Tunisia, Egypt, Mali, France, and United States.

Primary sources used in this report include publicly available information including websites, article, reports, and statements issued by all UN entities discussed in the report, UN resolutions, UN Security Council committee deliberations, conclusions, and recommendations, UN General Assembly deliberations and conclusions, public statements from UN entity representatives and member states, reports of UN Special Rapporteurs, legislation of all countries profiled, reports issued by state agencies of countries profiled, guiding documents of the Shanghai Cooperation Organisation (SCO), reports issued by UN counter-terrorism interlocutors such as Financial Action Task Force, Global Action Task Force, Global Community Engagement and Resilience Fund, and previously FIDH documented cases. FIDH generated new primary sources following attending meetings at UN headquarters regarding counter-terrorism and preventing violent extremism and through interviews with relevant actors. FIDH has not detailed or disclosed any confidential information that was shared during the preparation of this report. The report also draws from media reports in the United States, France, Russia, China, Mali, Egypt, and Tunisia, and previous reporting on UN counter-terrorism activities and human rights violations by non-governmental organizations and think tanks.

The final section of the report is complemented with seven country case studies organized into five main priorities on the UN's counter-terrorism agenda. These case studies serve as a demonstration of the practical human rights impact in countries that FIDH and its member organizations have been working on. These were each prepared in coordination with FIDH member organizations.⁷

7. The sections regarding Mali were prepared with Association Malienne des Droits de l'Homme (AMDH) and their human rights documentation. The sections regarding Russia were prepared with support from Agora International Human Rights Group. The sections focused on China were prepared with support and analysis provided by Human Rights in China (HRIC). The sections regarding Egypt were prepared with FIDH's MENA desk in Cairo and member organization Cairo Institute for Human Rights Studies (CIHRS). The sections focused on Tunisia were prepared with FIDH-Tunisia and based off of a Counter-Terrorism and Human Rights conference conducted in November 2016. The section regarding France is a shortened version of FIDH fact finding mission report "Counter-terrorism Measures & Human Rights: When the Exception Becomes the Norm."

The analytical framework of this report is based on international law, including human rights law, humanitarian, and refugee law in order to conduct a human rights assessment of the UN's counter-terrorism efforts, as underscored in the Global Counter-Terrorism Strategy and UNSC resolutions.⁸ However, the report more broadly is framed by an analysis of the institutional arrangement of counter-terrorism activities and entities based on quantitative and qualitative assessments of their human rights programming. This is done with the aim of determining the impact of these institutional arrangements and activities at the national level on fundamental freedoms and opportunities to improve.

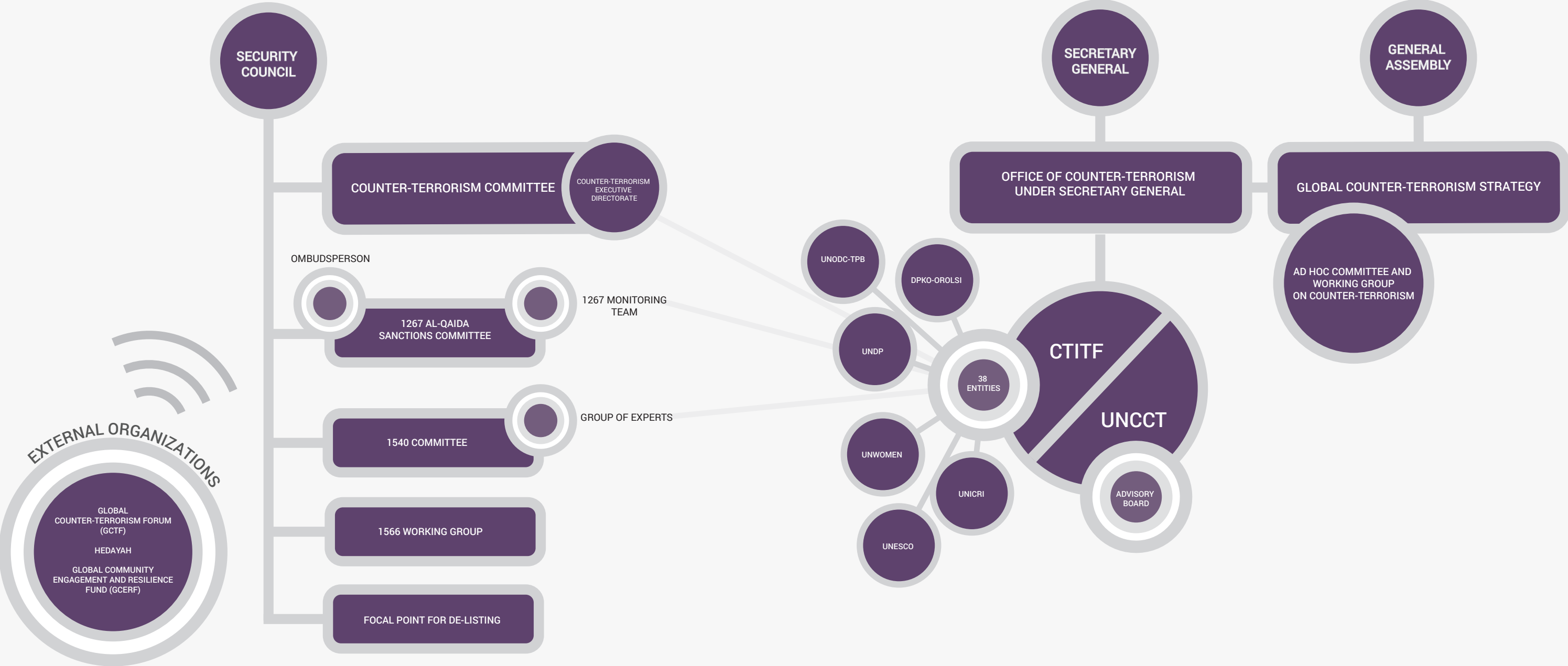
There are limits to the analysis as much information regarding the counter-terrorism activities undertaken by UN entities is not public and/or remains confidential. FIDH initially undertook this research with very limited public information available digitally. In June 2016, counter-terrorism entities updated their websites to include documents and information that was not previously available, dating back at least ten years. It is unclear whether there are other guiding documents that remain unavailable. Furthermore, many meetings concerning the development of this architecture and meetings of Security Council committees regarding their work are not open to civil society and thus the report does not reflect the debate in those deliberations. In addition, recommendations and updates regarding the implementation of relevant UNSC resolutions are not made public after 2006. This lack of transparency regarding the activities extends to capacity building activities conducted by the CTITF and UNCCT and country visits that are only detailed in limited press releases. Civil Society is not consulted in the development of counter-terrorism activities, thus there were many discussions that were not available to FIDH to determine all the details of counter-terrorism activities. This lack of transparency and information is further detailed in specific instances and reflected in the recommendations of this report. Furthermore, this report is not exhaustive of every activity conducted by UN counter-terrorism entities or of every form of regional cooperation given the scope and size of such an undertaking.

The authors of this report would like to express their gratitude to all the UN staff and officials, diplomats, experts and institutions that met with the FIDH team to answer their questions and provide more clarity on the UN complex counter-terrorism architecture. Their gratitude and thanks also go to FIDH member organizations and desk officers around the world who contributed to the elaboration of the report.

8. That all counter-terrorism measures must be taken in compliance with international law obligations.



UNITED NATIONS COUNTER-TERRORISM ARCHITECTURE BODIES



GRAPHIC: FIDH ©

The background is a solid dark purple. Overlaid on this are several thin, light purple lines that connect various circular nodes of different sizes. Some nodes are solid circles, while others are concentric circles. The lines and nodes form a network-like structure, with some lines radiating from a central point and others connecting different points across the frame. The overall effect is a complex, geometric pattern that suggests a global or interconnected theme.

CHAPTER 1

UNITED NATIONS COUNTER-
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1. UN SECURITY COUNCIL

The issue of terrorism did not come to the Security Council until the 1990's with resolutions that were limited in their engagement because they were not adopted under Chapter VII of the UN Charter. For example, Resolution 1269 (1999) was the first resolution to address terrorism in a general manner; it condemned the "acts and practices of terrorism" by calling on states to implement anti-terrorist conventions, cooperate to prevent terrorists, suppress terrorist financing, exchange information regarding suspected terrorists, deny safe havens to terrorists or those who plan to finance or commit terrorist acts, in addition to taking measures before granting refugee status. However, it held no power as it relied on states to sign relevant treaties in order for its recommendations to be effective.⁹

Resolution 1267 (1999) was the first adopted measure by the UNSC that established a counter-terrorism sanctions regime (see below). Originally adopted in the wake of attacks on US embassies in Africa, the resolution sought to pressure Taliban affiliates to hand over Osama bin Laden by establishing a targeted sanctions regime for Al-Qaida affiliates, Taliban, and Osama Bin Laden. Resolution 1373 (2001), adopted under Ch. VII of the UN Charter, which created the Counter-Terrorism Committee (CTC), set countering terrorism as a major priority for the UN.

To date the UNSC has established three subsidiary bodies that deal with terrorism related issues: the 1267 ISIL (Da'esh) and Al-Qaida Sanctions Committee, the Counter-Terrorism Committee (CTC) and its Executive Directorate (CTED), and the 1540 Committee. In addition, resolution 1566 (2004) established a working group that recommends practical sanctions measures and was also mandated to address the possibility of setting up a compensation funds for victims of terrorism. The Chairmanship of each of these committees is held by a UN Security Council non-permanent member for a period of two years. The Chairs are selected non-transparently by the permanent five members who either elect a Chair without prior notification or elect a chair based on intensive lobbying from the incoming non-permanent state.

1. 1267/1989/2253 ISIL (DA'ESH) AND AL-QAIDA SANCTIONS COMMITTEE

Current Chair¹⁰: Kazakhstan

Current Vice Chairs: Russian Federation and Uruguay

The ISIL (Da'esh) and Al-Qaida Sanctions Committee is responsible for overseeing the sanctions

9. S/RES/1269 Available : <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/303/92/PDF/N9930392.pdf?OpenElement>

10. UNSC committees and working groups are chaired or co-chaired by designated members of the Council who are announced on an annual basis by a Note of the President of the Security Council.

measures imposed by the Security Council against individuals, groups, and entities associated with terrorist groups ISIL (Da'esh) and Al-Qaida in order to weaken and counter terrorist activity by preventing the travel, arms and asset flows of those listed. It also oversees the consolidated list of entities and individuals.

Resolution 1267 (1999), adopted under Chapter VII of the UN Charter, was the first adopted measure by the UNSC that engaged in counter-terrorism work through the use of sanctions. Originally adopted in the wake of attacks on US embassies in Africa, the resolution sought to pressure Taliban affiliates to hand over Osama bin Laden by establishing a targeted sanctions regime for Al-Qaida affiliates, Taliban, and Osama Bin Laden. This sanctions regime has been subsequently modified and today concerns ISIS/ Da'esh affiliates and those associated with the Taliban. The Committee is currently chaired by Kazakhstan, the first time the committee has not been overseen by Western chairmanship.

The committee has been modified and strengthened by subsequent resolutions that require all States to take measures in connection with any individual or associated entity, as designated by the Committee, such as an assets freeze, travel ban, and arms embargo of designated individuals and entities. In addition to overseeing the implementation of sanctions measures, the Committee maintains a consolidated list of terrorists adding individuals or entities, reviewing them, considering their removal, or granting exemptions. The work of the Committee is supported by the Analytical Support and Sanctions Monitoring Team ("the Monitoring Team").

More recent resolutions have introduced three main reforms to the committee's processes:

- 1.** Resolution 1904 (2009) created the Office of an Ombudsperson in charge of receiving and analyzing de-listing requests regarding the ISIL (Da'esh) and Al-Qaida Sanctions List.
- 2.** Resolutions 1988 and 1989 (2011) split the Al-Qaida and Taliban sanctions regime into separate entities
- 3.** It created the Afghanistan sanctions Committee, 1988 Committee, to oversee relevant sanctions measures concerning the Taliban's threat to the peace, stability and security of Afghanistan. At the end of the last reporting period of 2016, there were 136 individuals and 5 entities on the Committee's sanctions list.¹¹

11. S/2015/977 available: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/977. Under the Taliban sanctions committee, individuals must "meet the reconciliation conditions agreed to by the Government of Afghanistan and the international community [including] respect for the Afghan Constitution" and contact the National Focal Point, the Afghan government to proceed with a de-listing request.

The ISIL (Da'esh) & Al-Qaida Sanctions List includes only the names of those individuals, groups, undertakings and entities associated with Al-Qaida and Da'esh, wherever located. As of October 25 2016, the sanctions currently contains the names of 255 individuals and 75 entities.¹²

1.1. Analytical Support and Sanctions Monitoring Team pursuant to resolutions 1526 (2004) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida and the Taliban and associated individuals and entities - the "Monitoring Team"

The Monitoring Team, based in New York, has a robust and multifaceted mandate to support counter-terrorism at the UN. The Team is primarily responsible for reporting on the implementation of sanctions measures and the nature of the threat posed by Al-Qaida, ISIL (Da'esh), and the Taliban, gathering information on reported cases of non-compliance with Committee actions, and assisting the Ombudsperson and Committee in carrying out their mandates regarding listings and de-listings.

The Monitoring Team was preceded by the Monitoring Group created by resolution 1363 (2001)¹³ following the recommendations by the 1333 Committee of Experts on Afghanistan, created by resolution 1333 (2000), a jointly drafted resolution by the United States and Russia following the attacks on the USS Cole.¹⁴ The 1333 Committee recommended that there be sanctions enforcement teams in each surrounding country around Afghanistan with an additional Office to support the work of the field teams. In response to the report the Security Council, with objection by Pakistan, adopted resolution 1363 (2001) on July 30, 2001 to establish a Monitoring Group in New York of five experts to "monitor the implementation of the measures imposed by resolutions 1267 (1999) and 1333 (2000)," but the creation was delayed following the events on September 11, 2001.¹⁵ Following the attacks, the Security Council established further sanctions measures against al Qaeda and the Taliban with the adoption of Resolution 1390 (2002) and reconstituted the Monitoring Group.¹⁶ The Monitoring Group was ultimately allowed to expire on January 17, 2004 following member state criticisms of the Monitoring Group reports and working methods that used unofficial sources, conducted independent country visits, and named those states who were not compliant with sanctions enforcement measures.¹⁷ The Monitoring Group's mandate expired and the "Monitoring Team" was created following the adoption of Resolution 1526 (2004) on January 30¹⁸ to support the 1267 Committee, with a very different mandate from its predecessor. The Monitoring Team must now obtain approval from the 1267 committee before a

12. For further details on those listed please refer to the Sanctions List Materials available: https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list

13. Comras, 72.

14. This resolution was focused on increasing measures against the Taliban, which included an arms embargo, a flight ban over Taliban controlled areas, and extending the 1267 Sanctions measures to Osama bin Laden and others associated with Al Qaeda. Comras, 69.

15. Comras 72-73.

16. Comras, 116-117.

17. Comras, 127.

18. S/RES/1526, Para. 6 http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1526%20%282004%29

country visit and present their findings to the countries concerned before spreading their reports. The “Monitoring Team” currently consists of ten experts¹⁹ that assist two Security Council committees: the 1988 committee and the ISIL (Da’esh) and Al-Qaida Sanctions Committee.²⁰ The current mandate of the Monitoring Team was extended by resolution 2253 (2015) until December 2019²¹ and covers:

- Submitting multiple reports to each Committee concerning, updates on implementation and recommendations for improvement, reports on Team’s work, and ad hoc reports on issues requested by the council;
- Reporting to each Committee on the changing nature of the threat posed by Al-Qaida, ISIL (Da’esh), and the Taliban
- Assisting the Ombudsperson in carrying out their mandate;
- Assisting Committees on reviewing names on Sanctions lists
- Consulting with Government of Afghanistan and other member states regarding individuals or entities to removed from the lists, to gather information on travel under granted exemptions of individuals, to make recommendations to implement measures, and work, in confidence, with state’s intelligence and security services
- Consulting with Member States and other UN entities such as UNODC, UNAMA IATA and non UN entities such as ICAO, WCO, FATF, INTERPOL
- Working closely with CTED, on country visits²², reporting, and events, 1540 Committee’s group of experts, CTITF and participate in the UN Global Counter-Terrorism Strategy;
- Working with Secretariat to standardize format of all UN Sanctions lists.²³

To date the Monitoring Team has published 19 operational reports and 12 additional reports.²⁴ During the last reporting period, the Monitoring Team conducted 26 country and technical visits in addition to attending 79 international conferences.²⁶ The Monitoring Team is not individually tasked to engage with human rights mechanisms apart from its engagement with the Office of the High Commissioner for Human Rights (OHCHR) as a chair of the Counter-Terrorism Implementation Task Force (CTITF) Working Group on Countering the Use of the Internet for Terrorist Purposes.²⁷

19. Previously, the Team was made of eight experts, and had five political affairs officers and administrative staff. Considering that two more experts were recently added with the adoption of resolution 2253 (2015), that figure is projected to have increased.

20. Work and Mandate summary on <https://www.un.org/sc/suborg/en/sanctions/1267/monitoring-team/work-and-mandate>

21. Resolution 2253, Annex 1: [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2253\(2015\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2253(2015))

22. Country Visit to Nigeria: <https://www.un.org/sc/ctc/blog/2015/10/21/large-un-delegation-visits-nigeria-to-assess-its-counter-terrorism-progress-and-capacity-needs/>

23. Monitoring Team “Work and Mandate” <https://www.un.org/sc/suborg/en/sanctions/1267/monitoring-team/work-and-mandate>

24. Reports; <https://www.un.org/sc/suborg/en/sanctions/1267/monitoring-team/reports>

25. The current head of the Monitoring Team is Hans Jakob-Schindler. 18th Report: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/629

26. Ibid, Paragraph 100.

27. 1267 Monitoring Team Description document, <http://www.un.org/en/sc/ctc/specialmeetings/2011/docs/1267-description.pdf>

The Committee and Monitoring Team were criticized for their lack of transparency regarding delisting procedures on the Consolidated List²⁸²⁹ which resulted in the creation of the Office of the Ombudsperson in resolution 1904 and the Focal Point for De-listing.

2. THE 1566 WORKING GROUP

Current Chair: Egypt

Current Vice-Chairs: Ethiopia, France and Russian Federation

The 1566 Working Group is an often overlooked body that works on counter-terrorism issues and has been tasked to focus on practical sanctions measures and victims of terrorism, but it is unclear how frequently the working group meets. The Working Group was created by UNSC resolution 1566 (2004) in the days after the terrorist attacks in Egypt, Pakistan, and the beheading of UK citizens in Baghdad. The Working Group consists of all members of the Security Council and was tasked to submit recommendations to the Council regarding measure to be imposed on those on the (then) Al-Qaida/Taliban Sanctions Committee. Additionally, it requested the Working Group to “consider the possibility of establishing an international fund to compensate victims of terrorist acts and their families” and submit those recommendations to the Council,³⁰ however it was later questioned whether this effort duplicated efforts to address victims of terrorism by CTITF.³¹

3. THE 1540 COMMITTEE

Current Chair: Bolivia (Plurinational State of)

Current Vice-Chairs: Senegal, Sweden and United Kingdom of Great Britain and Northern Ireland

The 1540 Committee is responsible for the implementation of Resolution 1540 (2004) imposed legally binding obligations to all States, under Chapter VII, to prevent the proliferation of nuclear, chemical, and biological weapons. Though the 1540 committee is not a body tasked to specifically counter-terrorism, it has a counter-terrorism component as the resolution inter alia, calls on states to prevent non-State actors from acquiring nuclear, chemical, and biological weapons.³² This issue

28. The Secretary General's High Level Panel on Threats, Challenges, and Changes in 2004 in addition to the 2005 World Summit Outcome Document called for fair and transparent procedures in delisting. This was coupled with a Presidential Statement of the council that requested the 1267 Committee to “continue its work on the Committee's guidelines, including on listing and delisting procedures.” S/PRST/2006/28. The High Level Panel Report available here : http://www.un.org/en/peacebuilding/pdf/historical/hlp_more_secure_world.pdf The 2005 World Summit Outcome Document available here: <http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf>

29. Additional commentary on the previous delisting procedures are available here Targeted Sanctions and Due Process, Bardo Fassbender, http://www.un.org/law/counsel/Fassbender_study.pdf in addition to Due Process and Targeted Sanctions: Update of the “watson Report” http://www.watsoninstitute.org/pub/Watson%20Report%20Update%2012_12.pdf

30. Paragraph 9-10 of S/Res/1566 (2004)

31. In the most recent report of December 2010, the Chairman of the Working Group wrote to the President of the Security Council on the Working Groups latest efforts as they were briefed in informal consultations with Jean-Paul Laborde, then Special Adviser to the Under-Secretary-General for Political Affairs, on the work of the CTITF regarding supporting victims of terrorism. It is important to note that during the briefings “some members noted that this [supporting victims of terrorism] could best be done by supporting the work of the Task Force and its working group, which they saw as having overtaken the mandate of the Working Group.” Paragraph 6, of S/2010/683. However, it was noted by other members that the Working Group was a subsidiary body of the Security Council and that the Council had not terminated the Working Group. This is clear example of duplication of efforts especially the Victims of Terrorism Support Portal established in CTITF by the United Nations Counter-Terrorism Strategy.

32. Resolution 1540 (2004) called on all member states to refrain from providing “any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery.” [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1540%20\(2004\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1540%20(2004))

was underlined in the 2016 Global Counter-Terrorism Strategy that called upon member states to support efforts of preventing terrorists from acquiring weapons of mass destruction.³³ The 1540 regularly cooperates with other Security Council counter-terrorism bodies in delivering joint briefings to the Security Council and participating in special meetings of the Counter-Terrorism Committee.

To carry out its mandate, the 1540 Committee facilitates technical assistance with member states and undertakes a yearly comprehensive review of its activities. The mandate of the 1540 Committee was extended to 2021 by Resolution 1977 (2011) for a period of ten years to fully implement resolution 1540.

4. THE COUNTER-TERRORISM COMMITTEE (CTC)

Current Chair: Egypt

Current Vice-Chairs: Ethiopia, France, and Russian Federation

The Counter-Terrorism Committee (CTC) is the main Security Council counter-terrorism body, consisting of all fifteen Security Council members, that reviews member states' implementation of binding counter-terrorism resolutions 1373 (2001) and 1624 (2005).

The Counter-Terrorism Committee (CTC) was established by resolution 1373 (2001), adopted unanimously in the wake of the September 11th 2001 terrorist attacks. This resolution was unique because it was the first legally binding Chapter VII resolution that applied to all UN membership as opposed to previous counter-terrorism efforts that were only valid if the state had voluntarily signed the relevant international treaty. The CTC was tasked with monitoring the implementation of resolution 1373 (2001), which requires States to, inter alia, combat terrorism focusing on preventing those financing, planning, and committing terrorism, increase information sharing with other states, and ensure that terrorist acts are established as criminal offenses.³⁴ In addition, the committee evaluates the implementation of resolution 1624 (2005) on incitement to commit acts of terrorism.³⁵ This resolution calls on UN member states to prohibit such incitement in law, prevent such conduct and deny safe haven to anyone "with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct."³⁶ More recently, the CTC was tasked in resolution 2178 (2014) concerning foreign terrorist fighters, to identify gaps and good practices that might hinder States' abilities to stem the flow of foreign terrorist fighters. While every country has provided the CTC with their initial reports regarding 1373 (2001), many countries have not provided reports regarding their implementation of resolution 1642 (2005).³⁷

33. Fifth Review Global-Counter-Terrorism Strategy, pg 13, A/RES/70/29.

34. S/RES/1373

35. S/RES/1624

36. 5.2: Resolution 1624 (2005)

37. CTC and CTED Assessments

The appointment of Chairmanships of UNSC subsidiary organs is not transparent. During its investigation, FIDH found out that in practice, Chairmanships, including the CTC Chair, are appointed by solely the P5 members. The CTC, together with its executive body the Counter-Terrorism Executive Directorate (CTED), holds meetings with regional bodies, and other member states on counter-terrorism work.³⁸ While in theory, the CTC is the gatekeeper for new initiatives and the CTED needs approval from the council for all of its activities, this is far from how it operates in practice. The CTC chair's authority over CTED is only determined by their commitment and diligence to exert their influence. Chairs have had their involvement limited to convening the Committee or extended to even attending country visits. Countries that chair the Committee who have national experience in countering terrorism are perceived to have more legitimacy and authority compared to other chairs. Actually in practice, we found out that the working relationship between CTC and CTED is reversed, with CTED wielding the power to choose the states where to conduct visits and provide analysis about.

The CTC's first program of work stipulated that "In accordance with the Committee's rules of procedure, the Chairman and, as appropriate, the Vice-Chairmen, in consultation with the Committee, will hold regular briefings of Member States and of the media to explain and publicize the work of the Committee."³⁹ However, these regular briefings of the media or equally important, with civil society organizations, have yet to materialize. Indeed it was only in June 2016 that the CTC relaunched its website and fifteen years after being created finally made its previous working methods and programs of work available to the public.



Special Meeting on Terrorist Threats to Civil Aviation - Jean-Paul Laborde (left), Executive Director of CTED, during the special meeting. At his side is Amr Abdellatif Aboulatta, Permanent Representative of the Arab Republic of Egypt to the UN and Chair of the Counter-Terrorism Committee. 07 July 2017

UN Photo/Kim Haughton

38. In the CTC's first program of work stipulated that " In accordance with the Committee's rules of procedure, the Chairman and, as appropriate, the Vice-Chairmen, in consultation with the Committee, will hold regular briefings of Member States and of the media to explain and publicize the work of the Committee." http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2001/986&referer=/english/&Lang=E

39. http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2001/986&referer=/english/&Lang=E

5. COUNTER-TERRORISM EXECUTIVE DIRECTORATE (CTED)

The Counter-Terrorism Executive Directorate (CTED) is an expert body that supports the Counter-Terrorism Committee (CTC) fulfill its mandate of reviewing member states' implementation of binding counter-terrorism resolutions 1373 (2001) and 1624 (2005) by conducting country visits with states, providing counter-terrorism legal and technical assistance, and assessing need gaps with states. Given that CTED must conduct all of its activities at member states' request, it is obvious that CTED can neither behave as an independent counter-terrorism monitor, nor investigate issues of member states' non-compliance.

On March 26, 2004, the Security Council decided to restructure the CTC to provide strategic advice to advance the CTC's ability to fulfill its mandate through resolution 1535 (2004) by creating the Counter-Terrorism Executive Directorate (CTED). Jean-Paul Laborde, a French magistrate with a long history of engaging in counter-terrorism work at the UN, was appointed Director of CTED on 22 July 2013 and terminated his mandate in July 2017.⁴⁰ Ms. Michèle Coninx of Belgium was appointed Executive Director of CTED on 11 August 2017, the first woman to hold a senior position in the UN counter-terrorism structure.⁴¹ Currently CTED operates with approximately 40 staff members,⁴² including two senior human rights officers. Half of the staff are legal experts who are responsible for analyzing states' submissions regarding their implementation of key UNSC resolutions. „According to CTED's working methods, operations should be ultimately decided and instigated by the CTC when in reality it is CTED that leverages its expertise, and primarily conducts the visits. Even though the CTC is a formal convening body that in theory is meant to welds the most influence, in practice it is CTED that is responsible for drafting recommendations and monitoring implementation of resolutions.

CTED works with states on their implementation of resolution 1373 (2001) and 1624 (2005) and conducts country visits only with prior approval of the host government and endorsement by the CTC Plenary. The only publicly available reports regarding states' implementation are available from 2001- 2006, but “ a decision (by the CTC) was made not to make public subsequent reports on resolution 1373 (2001).”⁴³ The UN Special Rapporteur on the Promotion and Protection of

40. He previously served in the French justice system, but has worked for over 18 years with the United Nations. He has held senior positions focused on counter-terrorism and criminal justice at the United Nations Office of Drugs and Crime (UNODC) in Vienna for 15 years (1993-2008) and at the Counter-Terrorism Implementation Task Force (CTITF) (2009-2010). Laborde has interacted with other UN counter-terrorism subsidiary bodies such as the 1566 Working Group of the Security Council, when he was asked to engage in informal consultations on March 23rd, 2010, with the Working Group in his position as the Special Adviser to the Under-Secretary-General for Political Affairs on counter-terrorism matters of CTITF.

41. “Secretary-General Appoints Michèle Coninx of Belgium Executive Director, Counter-Terrorism Executive Directorate” <https://www.un.org/press/en/2017/sga1750.doc.htm>

42. Organizationally, the Executive Directorate operates in two parts, the Assessment and Technical Assistance Office (ATAO) and an Administrative and Information Office (AIO). The ATAO is broken into three sub-groupings where legal experts are able to specialize according to regions. Then each of these sub-groupings work horizontally in five subgroups that concentrate on technical issues which they then share with the respective sub-groupings. According to the CTED's website, “The groups deal respectively with technical assistance; terrorist financing; border control, arms trafficking and law enforcement; general legal issues, including legislation, extradition and mutual legal assistance; and finally, issues raised by resolution 1624 (2005); as well as the human rights aspects of counter-terrorism in the context of resolution 1373 (2001).”

43. <https://www.un.org/sc/ctc/resources/assessments/>

Human Rights While Countering Terrorism noted that these reports and assessment that would potentially undertake a human rights assessment, are only available “in the context of confidential country reports that do not see the light of day.”⁴⁴ It is unclear whether this was an internal decision made by CTED or the CTC. After the adoption of resolution 1456 (2003), which called on states to ensure that their counter terrorism measures complied with human rights, humanitarian, and refugee law, CTED claimed to take a more proactive approach to human rights by liaising with OHCHR, appointing a human rights expert to their staff, in addition to establishing a working group on the Human Rights Aspects of Counter Terrorism in 2008.⁴⁵

To date, the CTED has conducted over 100 country visits⁴⁶ and even though it remains publicly unclear how much time in advance CTED plans country visits, these are planned approximately two years in advance, in consultation with the CTC. Country visits are composed of a large delegation that reaches up to 15 persons, with representatives from CTED, other UN entities, and non UN fora such as financial regulating bodies known as FATF-Style Regional Bodies (FSRB). During country visits, CTED uses the Overview for Implementation Assessment (OIA)⁴⁷ to determine the counter-terrorism capacity building needs and status of implementation of each member state visited. The analytical tool that CTED uses to ultimately assess the visit is the Detailed Implementation Survey (DIS) consisting of 200 questions, with 15% of them relating to human rights that allows CTED to assess the status of Member States implementation of Resolutions 1373 (2001) and 1624 (2004).⁴⁸ However, the assessment is only shared with the state and only prepared based on official sources and information provided by the state. FIDH was able to read and look over country visit reports and found out that fourteen years after the adoption of resolution 1373, some countries had still not met all of their requirements under international law to fulfill their obligations. Most importantly, CTED does not have the tools or capacity to follow-up on their recommendations following a country visit to comprehensively assess their impact. This is compounded by the fact that state visits are not conducted independently and the reports are not made public.

44. “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism” <http://www.ohchr.org/Documents/Issues/Terrorism/A-HRC-34-61.pdf>

45. CTED, Human Rights

46. In preparation for a visit the CTED prepares a proposal to visit a member state which contain the rationale for the visit and the international, regional, and sub-regional organizations in addition to UN bodies that could facilitate technical assistance. These proposals are submitted to the CTC plenary whereby after their acceptance, the CTED will work to secure the consent of that state for a visit. According to the publicly made document on the procedure for state visits, the decision on whether to pursue a state for technical assistance or capacity building is entirely dependent on the decision of the CTC plenary. In addition, once the CTED conducts a member state visit, the CTED prepares a report which it first provides to the visited state before seeking endorsement by the CTC Plenary. However, the only public information that is available according to the CTC and CTED is “an information document for the public domain which will refer to the visit in question in general terms. The text of this document will be prepared by the CTED for the consideration and endorsement of the CTC Plenary.”<http://www.un.org/en/sc/ctc/docs/policypapers/procedures-for-visit.pdf>

47. Previously, CTED used a Preliminary Implementation Assessment (PIA), but switched to a new format called the Overview for Implementation Assessment (OIA) as the PIA's reporting structure surpassed 100 pages and the OIA simplifies the process into a four-page document. COMMITTEE PRESENTS TO MEMBER STATES A NEW TOOL TO ASSESS THEIR IMPLEMENTATION OF SECURITY COUNCIL RESOLUTIONS, May 2, 2013

48. Most of the questions on the DIS are non-narrative and only require a short answer that is gauged by “Yes, Largely, Partially, Marginally, No”

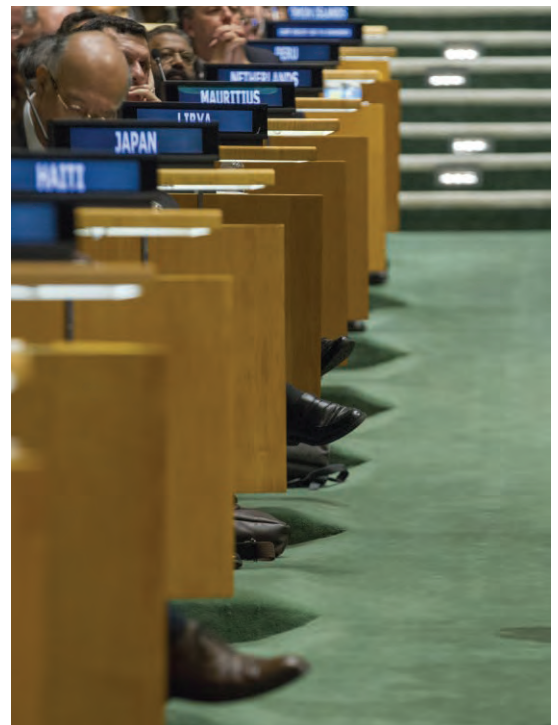
2. UN GENERAL ASSEMBLY

Most recently, the General Assembly requested Secretary General Guterres to develop a proposal to review the capability of the United Nations system to implement its Global Counter-Terrorism Strategy. As requested, the Secretary General proposed to create a separate Office of Counter-Terrorism (OCT) to be headed by an Under-Secretary General, to be funded in the UN regular budget, that the General Assembly has welcomed and adopted.

1. UN GLOBAL COUNTER-TERRORISM STRATEGY

The UN Global Counter-Terrorism Strategy (GCTS), adopted by the General Assembly in 2006 and reviewed every two years, is the guide for the United Nations' counter-terrorism activities and priorities.

Parallel to the work in the Security Council and the General Assembly, former Secretary General Kofi Annan led the initial development of the Global Counter Terrorism Strategy as the United States escalated their War on Terror. In a keynote address at the International Summit on Democracy, Terrorism, and Security⁴⁹ delivered in Madrid, Spain in 2004, he echoed a call for comprehensive strategy to address terrorism at the United Nations, based on a recommendation by the High Level Panel on Threats, Challenges and Change.⁵⁰ The then Secretary-General made it clear that upholding "human rights [was] not merely compatible with a successful counter terrorism strategy. It is an essential element of it."⁵¹ Annan followed up on this call for a strategy by releasing his report *Uniting Against Terrorism Recommendations*



Opening of General Debate of General Assembly Seventy-first Session 20 September 2016
UN Photo/ JC McIlwaine

49. In his keynote, he detailed the "five D's" which would be the foundation of the counter-terrorism strategy in addition to urging member states to unite behind a clear definition of terrorism. The five D's were to:-- first, to dissuade disaffected groups from choosing terrorism as a tactic to achieve their goals;-- second, to deny terrorists the means to carry out their attacks;-- third, to deter States from supporting terrorists-- fourth, to develop State capacity to prevent terrorism; and-- fifth, to defend human rights in the struggle against terrorism. SECRETARY-GENERAL OFFERS GLOBAL STRATEGY FOR FIGHTING TERRORISM, IN ADDRESS TO MADRID SUMMIT

50. The High Level Panel was created by Annan to study global threats to peace and security and make recommendations for changes in the international system. The High-Level Panel produced a report in 2004 titled "A More Secure World -- Our Shared Responsibility," A More Secure World: Our Shared Responsibility

51. In the High-Level Panel's report they stated that "Throughout the Panels' regional consultations, it heard concerns from Governments and civil society organizations that the current "war on terrorism" has in some instances corroded the very values that terrorist target: human rights and rule of law...A thread that runs through all such concerns is the imperative to develop a global strategy of fighting terrorism that addresses root causes and strengthens responsible States and the rule of law and fundamental human rights." Page 48, Paragraph 147 -148, A More Secure World: Our Shared Responsibility

for: Global Counter-Terrorism Strategy⁵² that he presented to the General Assembly in 2006.

The UN Global Counter-Terrorism Strategy is a non-binding and broad instrument that is aimed at enhancing national, regional and international efforts to counter-terrorism. The Strategy is composed of four pillars:

- I.** Addressing the conditions conducive to the spread of terrorism
- II.** Preventing and combating terrorism
- III.** Building States' capacity and strengthening the role of the United Nations
- IV.** Ensuring human rights and the rule of law.⁵³

The General Assembly reviews the Global Counter-Terrorism Strategy every two years in order to re-evaluate the counter-terrorism landscape and align it with member states' priorities.

This was the first time that all Member States agreed to a common strategic approach to fight terrorism. In doing so, states not only sent a clear message that terrorism is unacceptable, but also resolved to take practical steps individually and collectively to prevent and combat it. Those practical steps include a wide array of measures ranging from strengthening state's capacity to deal with terrorist threats to better coordination of UN counter-terrorism activities. The most recent review, the fifth review, was adopted in July 2016, and detailed in Section 6 of the New Landscape of Counter-Terrorism at the UN.

2. AD HOC COMMITTEE AND WORKING GROUP ON TERRORISM

Chairman of Ad Hoc Committee on Terrorism since 2000: Sri Lanka

The Ad Hoc Committee on Terrorism was established in 1997 by UNGA Resolution 51/210 on December 17, 1996 and is tasked with drafting a Comprehensive Convention on Terrorism. The General Assembly recommended that the work of this Ad Hoc Committee be supplemented by a working group within the Sixth Committee, which was established on 22 September 1997.⁵⁴ Since then, the Ad Hoc Committee has negotiated three treaties: the International Convention for the Suppression of Terrorist Bombings (1997), the International Convention for the Suppression of the Financing of Terrorism (1999), and the International Convention for the Suppression of Acts of Nuclear Terrorism (2005). The Ad Hoc Committee has been working since 2000 on a draft comprehensive convention on terrorism. However, the negotiations on the text have been deadlocked over the definition of terrorism since 2002 as the committee "works on the basis that nothing is agreed until everything is agreed."⁵⁵

⁵². Uniting against terrorism: recommendations for a global counter-terrorism strategy

⁵³. UN Global Counter Terrorism Strategy

⁵⁴. Para 1, 2, A/C.6/52/L.3

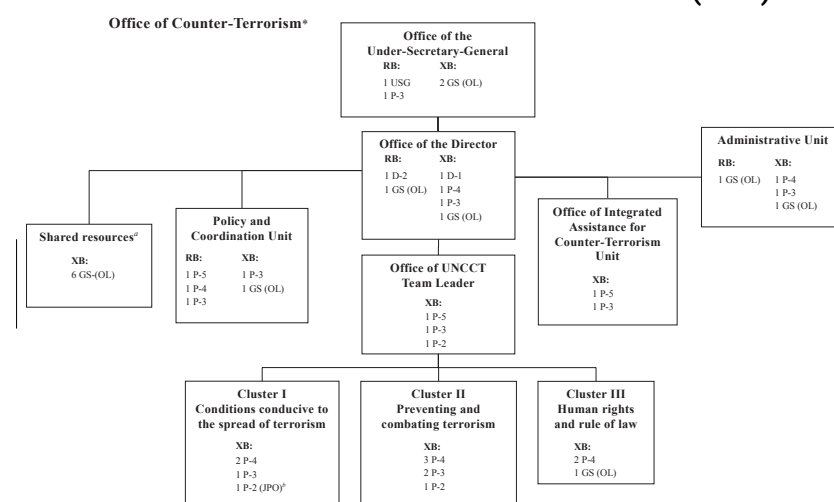
⁵⁵. <https://www.un.org/press/en/2016/gal3537.doc.htm>

The Ad Hoc Committee did not meet in 2012, 2014, 2015, and 2016 signaling less political will to create a universally agreed upon definition and finalize a draft. The Committee is not expected to meet in 2017 either. However, the Sixth Committee working group has met each year at the General Assembly; this past year (2016) it met under the chairmanship of Israel where it decided to hold another working group meeting in the next session and discuss holding a high level conference on the remaining issues.

The Ad Hoc Committee and Working Group have discussed the idea to hold a high level conference under the auspices of the United Nations to generate the political will necessary to finalize the comprehensive convention on terrorism.⁵⁶ It was noted by the Working Group in 2015 that “if the impasse remained [after a high level conference]... delegations could acknowledge that agreement was not possible and consider suspending further deliberations.”⁵⁷ To date, there has not been a high-level conference indicating that a politically ripe time might never approach. This delay empowers states to rely on overly broad definitions of terrorism that create a vehicle for human rights abuses.

3. UN SECRETARIAT

1. UNITED NATIONS OFFICE OF COUNTER-TERRORISM (OCT)



Abbreviations: RB, regular budget; XB, extrabudgetary.

* 2 P-3 and 1 GS (PL) positions are located in the Executive Office of DPA for financial management of the Office of Counter-Terrorism.

^a Shared resources provide programme management support to the Office of Counter-Terrorism.

^b Associate expert.

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Proposal for 2018-2019 Biennium A/72/117

56. In 2016, Chairman Mr. Perera underscored in his oral report to the Sixth Committee in 2016 during the seventy-first session of the GA “that delegations had discussed the possibility of convening a high level conference on the matter” but that the representative of Egypt noted that “the proposal to hold a conference had been made a decade earlier, and had stressed that difference in opinion on the subject of a convention were of a political nature and could only be resolved at that level” but at the session of 2016 there was “fresh interest to engage.” Sixth Committee Approves Three Requests for Observer Status as Working Groups Report Progress, ongoing Challenges

57. It was also expressed in the 2015 oral report that while many delegations supported the organization of a high-level conference, other states “pointed out that the time was not ripe for such a conference and that the outstanding differences should be addressed within the framework of the Sixth Committee, not by Heads of State or Government.” Paragraph 20, 22 A/C.6/70/SR.27

The Office of Counter-Terrorism (OCT) is the newest addition to the UN counter-terrorism structure and was created by the UNGA resolution 71/291 in an effort to enhance coordination and coherence across UN counter-terrorism activities and strengthen UN counter-terrorism capabilities. The creation of the OCT moves CTITF and UNCCT out of the Department of Political Affairs (DPA) and into the new office to be led by the new Under-Secretary General (USG), Mr. Vladimir Ivanovich Voronkov of the Russian Federation.

In the latest fifth review of the UN Global Counter-Terrorism Strategy (GCTS), Member States frustrated by the UN's counter-terrorism weak capacity and confused by the bifurcated structure and multiplicity of bodies, requested the Secretary General to develop a proposal on strengthening the capability of the UN system in implementing the Strategy in a balanced manner, meaning that Pillar IV, focused on ensuring the protection of human rights, would be equally upheld.⁵⁸

The Secretary General proposed, in a letter on February 3, 2017, to create a new Office of Counter-Terrorism (OCT) to be headed by a newly appointed Under Secretary General. This was not a new effort as the idea to appoint a counter-terrorism head had been discussed by member states previously. The proposal did not explicitly outline the office's terms of reference apart from five general priorities outlined in the Secretary General's report following consultations with member states.⁵⁹ It is worth mentioning that the report was not drafted by the Office of the Secretary General. Rather, the staff of the UNCCT/CTITF (under the Policy and Coordination Unit) were responsible for compiling country inputs and conceptualizing the new OCT. This is significant considering that the UNCCT/CTITF are predominantly funded through extra-budgetary resources mostly allocated by the Kingdom of Saudi Arabia. Similarly, it is unclear who specifically works in the UNCCT and CTITF. To this effect, one could easily conclude that the drafting process of the report was conducted by the entities that it sought to improve and whose livelihood is dependent on a key donor, Saudi Arabia.

58. A/RES/70/291 Fifth Review Global Counter-Terrorism Strategy

59. The Secretary General outlined the proposed costs of the office in a letter dated February 3, 2017. This letter was shared with UN membership through the office of the President of the General Assembly. The OCT would additionally cost \$573,800 dollars for the USG position and a P3 Special Assistant.

The Secretary General's report was released ahead of schedule without circulating the proposal to the bodies concerned. The discussion of the report was hastily organized for the morning following its release, before states had sufficient time to review its contents. During the discussion, procedurally, not all member states agreed on the way forward for the creation of the OCT. Following the presentation of the report on April 12th 2017, the President of the General Assembly (PGA) outlined two options for the UNGA to move forward with the creation of the Office and the appointment of the USG.

1. The PGA would lead negotiations of a short technical draft resolution to welcome and adopt the Secretary General's report or
2. The negotiations could be longer and co-facilitated by member states to debate the terms of the OCT.

During the initial responses from member states, members of the Organization of Islamic Cooperation (OIC), mainly Saudi Arabia and Egypt, leaned towards favoring the second option, arguing that they needed more time to consider the modalities of the Office's set-up. It is worth recalling that the OIC has a financially vested interest in the future of the OCT as Saudi Arabia is the main funder of UN Counter-terrorism activities while Egypt is determined to remain a key player once it leaves the Chairmanship of the Counter-terrorism Committee at the end of 2017. Russia, on the other hand, was more inclined to favor a quick proceeding through the adoption of a short technical resolution. This is not surprising given that Russia was the only member-state to suggest a candidate to assume the position of the USG on Counter-Terrorism and thus expand its already significant influence within the overall structure.



President of the General Assembly
Adoption of A/RES/71/291 by the UNGA

Ultimately, member states proceeded with a PGA led effort that finalized a draft resolution welcoming the recommendations by the Secretary General in the beginning of May 2017, despite the fact that not all country inputs were taken into consideration.

The program budget to create the new office shortly went to the fifth committee for review and was adopted on June 9th in less than 5 minutes. The OCT was formally created on Thursday June 15th as the General Assembly adopted A/RES/71/291. The resolution was adopted by consensus with eight states and the European Union making a statement following. The

vote was hastily put between agenda items and considered

while the votes for members elected to the Economic and Social Council

were being counted. The explanations of vote that followed demonstrated

that there were many issues that remained unresolved such as the continuation of the UNCCT advisory board which some states claimed prioritized certain country inputs over others and did not reflect the UN principle of impartiality. The President of the General Assembly said that a debate on the OCT would be scheduled at a following date. However, the debate took place a month and a half later on July 28th, which was a Friday afternoon during summer with limited attendance. It was organized under the title “United Nations Global Counter-Terrorism Strategy” not the Office of Counter-Terrorism.⁶⁰ This further demonstrates the rushed nature of the creation of the OCT without full debate that FIDH had previously noted in a released statement.⁶¹

It is expected that newly appointed USG Voronkov will fully assume his position beginning in September 2017, but the OCT was effectively operational from June 15th. Mr. Jehangir Khan, Director of CTITF and UNCCT was made Officer-in-Charge of the OCT in the meantime. The timeline for the full operationalization of the OCT has yet to be determined.⁶²



2017 Security Council Retreat with Secretary-General
02 May 2017
UN Photo/Eskinder Debebe

60. The UN Journal stated that “Debate on the item will be scheduled at a later date. Draft resolution A/71/L.66 will be considered while the ballots for the election of eighteen members of the Economic and Social Council are being counted.

61. FIDH, “UN Counter-Terrorism Reform : a hasty process will favor authoritarian States rather than effective restructuring” <https://www.fidh.org/en/issues/terrorism-surveillance-and-human-rights/un-counter-terrorism-reform-a-hasty-process-will-favor-authoritarian>

62. The initial proposal of the Secretary-General was submitted to the member states in February 2017 and the latter were asked to submit their recommendations in writing over the following weeks. However, only 28 states and three organizations contributed recommendations. The Secretary-General’s report was released on the evening of April 11th, 2017, weeks ahead of schedule, before it was even circulated to the Counter-Terrorism Implementation Task Force (CTITF) entities. The President of the General Assembly (PGA) subsequently called for another meeting regarding the adoption of the report on April 26th.

Major change is needed in the counter-terrorism architecture to overcome silos, overlapping mandates, and enhance coordination among all entities. However, this reform has been expedited and cosmetic. There are a number of shortcomings in the Secretary General's proposal that should have been addressed before effectively establishing the OCT:

- The sustainability of the OCT should have been more explicitly outlined in the proposal. The proposed OCT does not have guaranteed financial stability for its staff and operations: currently, 29 of the 35 staff will be funded through extra-budgetary resources, instead of the UN regular budget.
- The proposal laid out in the SG's report did not clearly stipulate the working relationship between the OCT and Security Council entities apart from "close relationship." In order to ensure transparent structured cooperation, more detail is needed on the nature of this cooperation.
- The report did not detail any information regarding the criteria for the appointment of the USG position besides that it will "ensure that he/she is qualified and experienced in the context of counter-terrorism, including Preventing Violent Extremism" even though the Global Counter-Terrorism Strategy (GCTS) is clear that "protection and promotion of human rights for all and the rule of law are essential to all components of the strategy."⁶³ This should be particularly considered with regards to the record of the candidate's country of origin on protecting human rights while countering terrorism.
- Independent human rights organizations, whose activities increasingly confront counter-terrorism contexts, should have been consulted not only in the process of establishing the OCT, but also in order to provide additional evaluation of the human rights compliance of UN counter-terrorism activities, along with a greater involvement of the Office of the High Commissioner on Human Rights (OHCHR).

However, even with the creation of this Office and the appointment of a USG, it remains unclear on how it will effectively overcome the challenges of counter-terrorism work at the UN and centralize the protection of human rights in all of its efforts.

63. Global Counter-Terrorism Strategy Annex, pg 9.

2. COUNTER-TERRORISM IMPLEMENTATION TASK FORCE (CTITF)

Current CTITF Chair: The Under-Secretary General (Head of OCT) from the Russian Federation
Director: From Pakistan

Previous CTITF Chair: The Assistant-Secretary General (Head of DPA) from the United States

In 2005, the Counter-Terrorism Implementation Task Force (CTITF) was created by Secretary-General Kofi Annan and later endorsed by the Global Counter Terrorism Strategy to enhance the coordination and coherence of counter-terrorism efforts within the UN system.

It was later institutionalized under the Department of Political Affairs in 2009 and has now moved into the new Office of Counter Terrorism created in June 2017. Currently, the Task Force consists of 38 entities (36 UN entities, Interpol, and the World Customs Organisation) who have a stake in counter-terrorism efforts by virtue of their work, with CTITF being responsible for the coordination of all counter-terrorism activities amongst them. Each entity makes contributions consistent with its mandate. The CTITF has created a matrix of all projects and activities carried out by the 38 entities.⁶⁴ The primary goal of CTITF is to “maximize each entity’s comparative advantage” by acting as one coordinated body to help Member States implement the four pillars of the Strategy.⁶⁵

Importantly, CTITF manages the extra-budgetary resources⁶⁶ for CTITF/UNCCT programs such as the delivery of technical assistance to member states. If the CTITF has real convening power to coordinate it shares the same staff and has access to the UN Counter-Terrorism Center’s (UNCCT) resources, the main funding arm of all capacity building counter-terrorism programs. CTITF claims to regularly coordinate with CTED and the CTC in addition to coordinating with member entities. During its investigation, FIDH found out that while CTITF and CTED liaise, in the past, the Chair of CTITF had never met with the Chair of the CTC in some instances.

CTITF organizes its work through working groups (there are currently 12) and counter-terrorism related projects and initiatives. As of December 2015, CTITF entities had conducted 295 projects in all four pillars of the strategy with 110 projects in Pillar I, 57 projects in Pillar II, 108 project projects in Pillar I, 57 projects in Pillar II, 108 projects in Pillar III, and only 20 projects in Pillar IV, focused on the promotion and protection of human rights.⁶⁷

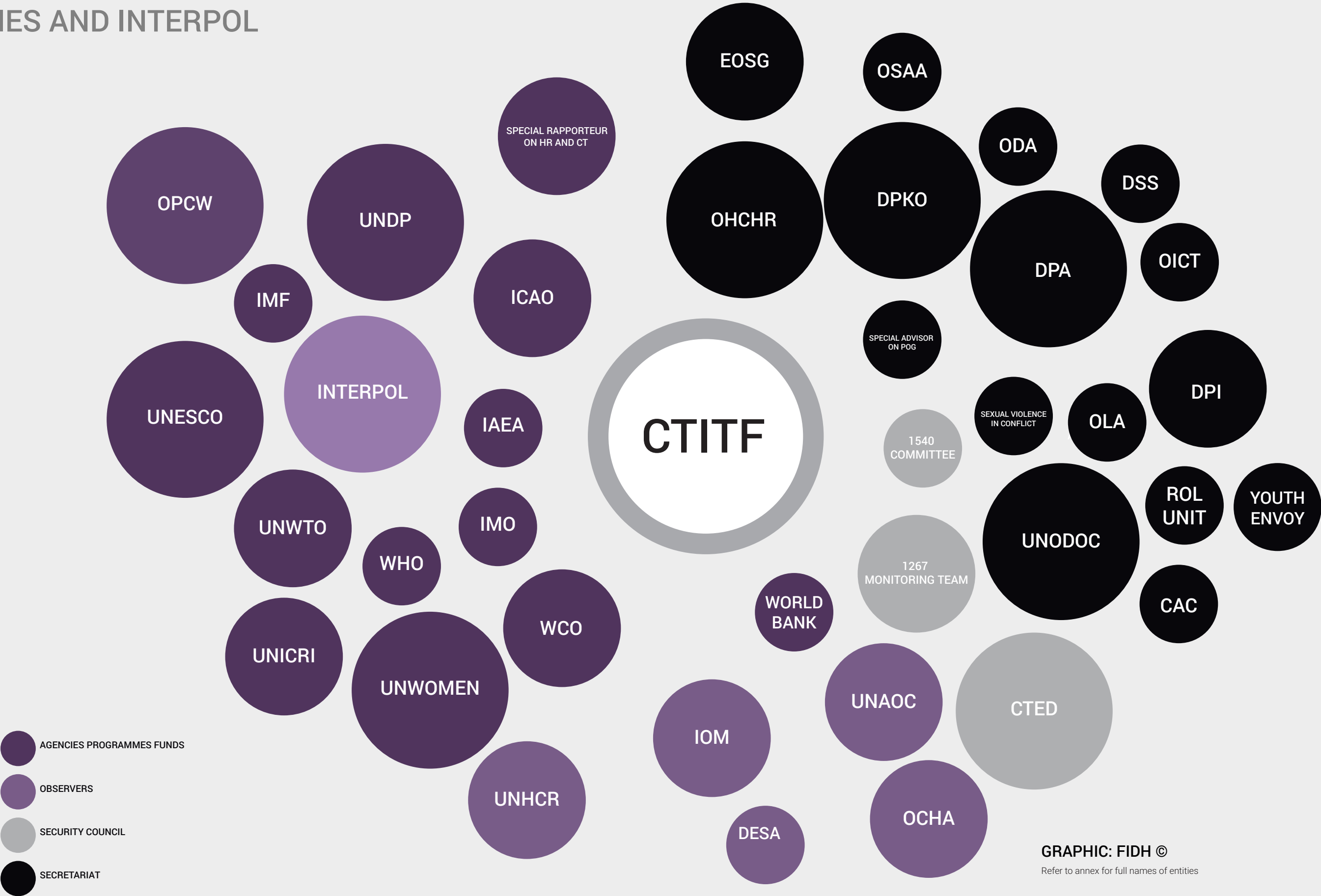
64. A/68/841, Annex 1

65. About the Task Force, CTITF, <https://www.un.org/counter-terrorism/ctitf/en/about-task-force>

66. This covers all voluntary contributions to the UNCCT and specific capacity building programs of the CTITF/UNCCT.

67. Pg 25-69, A/70/826

CTITF 38 INTERNATIONAL ENTITIES AND INTERPOL



GRAPHIC: FIDH ©
Refer to annex for full names of entities

3. UN COUNTER-TERRORISM CENTRE (UNCCT)

The UN Counter-Terrorism Centre (UNCCT), created by the Kingdom of Saudi Arabia with two founding donations is tasked to deliver counter-terrorism capacity building with states.

The UNCCT was created by resolution A/RES/66/10 and became operational in April 2012. The UNCCT, previously located within DPA, now relocated to the new OCT, carries out counter-terrorism projects and allegedly partners with “active think tanks and NGOs” to research emerging issues. The UNCCT is best understood as half of a same coin of CTITF where CTITF is responsible for coordination and coherence and the UNCCT is responsible for capacity building.

The centre’s objectives are driven by the Secretary General’s “6-Point Vision” articulated at the 9th meeting of the UNCCT Advisory board on November 7th, 2014. The Secretary-General outlined his vision for the role of the UNCCT to turn it into a “Centre of Excellence” that will lead in thematic issues not addressed by other UN bodies and provide the capacity building needed for Member States to fulfill the UN Global Counter Terrorism Strategy.⁶⁸ The UNCCT is now guided by its five year strategy that started in 2016 that aligns with the four main pillars of the GCTS as outcomes with twelve secondary outputs assigned to each pillar.⁶⁹

In the recent 2016 fifth review of the UN Global Strategy, the UNCCT was mentioned five separate times thus demonstrating the UNCCT’s growing importance in UN counter-terrorism work. This is particularly relevant since the only available funding for counter-terrorism programs within the entire UN counter-terrorism system is through the UNCCT: as a matter of fact, the UNCCT was created and funded through an initial \$10 million donation by the Kingdom of Saudi Arabia and followed by an additional \$100 million to finance the rest of the research and work.⁷⁰ Since then, 18 other countries have contributed minor donations⁷¹ but most of the \$132 million budget still comes from Saudi Arabia. This, combined with the fact that the Permanent Representative of Saudi Arabia, Ambassador Abdallah Yahya A. Al-Mouallimi is the chairman of the UNCCT’s

68. UNCCT should become a Centre of Excellence on subject matter that is not covered by other areas of the United Nations, “such as counter-terrorism narratives, counter-radicalization, enhanced dialogue and cooperation between the development and security/counter-terrorism sectors, and terrorist use of the internet”

UNCCT will provide “capacity building for Member States and regional organizations to support the implementation of all four Pillars” of the UN Global Counter-Terrorism Strategy with a particular focus on Afghanistan, Kenya, Nigeria, the Sahel, the Horn of Africa, South Asia, and the Maghreb

The capacity building efforts must make a difference in the short, medium and long term with a strategic approach to utilizing resources

UNCCT will support UN Country Teams, UN Special Political Missions, and UN Peacekeeping Operations in order to ensure that counter-terrorism is mainstreamed into the SG’s priorities: prevention of conflict, promotion of development in context of the post-2015 development agenda, and the Rights up Front initiative.

UNCCT will establish a mechanism to “incentivize counter-terrorism by jointly funding capacity building projects”

UNCCT will “ensure effective program and project management” by ensuring that the activities finance are administered in accordance with UN regulations and rules. UNCCT Vision

69. For a full articulation of the five year strategy in general terms as the detailed 5-year program is not publicly available please refer to the UNCCTs website that details each “output” for each pillar of the Global Counter-Terrorism Strategy available here: <https://www.un.org/counterterrorism/ctitf/en/uncct/themes-priorities>

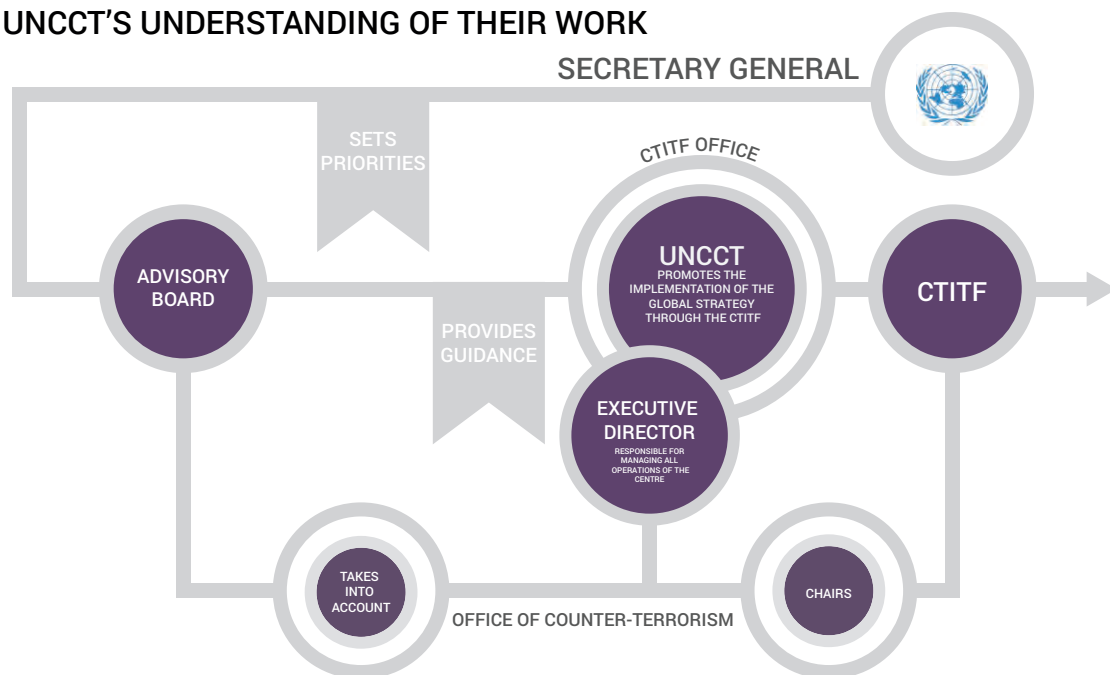
70. The Centre was acknowledged in the initial adoption of the Global Counter-Terrorism Strategy in Pillar II, Paragraph 9: “To Acknowledge that the question of creating an international centre to fight terrorism could be considered, as part of international efforts to enhance the fight against terrorism.” Annex, Pillar II, Paragraph 9. A/RES/60/288

71. To date the Center has received contributions in total of \$132 million from more than 20 contributors over the past five years

Advisory Board⁷², which has authority over the budget, programs, projects and proposals of the Center, clearly comforts Saudi Arabia in a very influential position to lead the UN counter-terrorism efforts⁷³

The UNCCT is lead by the same leadership as the CTITF and shares the same operational staff, but within its activities it at times appears to conduct different programs. FIDH learned that moving forward all capacity building programs will be under the UNCCT label since it enacted its 5 year program in 2016. Before the 5 year program, different programs were under UNCCT and CTITF labels and those that are still operational have kept those labels. For example, prior the five year program, as noted in 2015, the UNCCT has participated individually on 15 projects: 4 projects in Pillar 1, 6 projects in Pillar II, 4 projects in Pillar III, and 1 project within Pillar IV. However, UNCCT in conjunction with CTITF, displayed as UNCCT/CTITF has worked on 14 projects since 2015: 4 projects in Pillar I, 0 projects in Pillar II, and 6 Projects in Pillar III, and 4 projects in Pillar IV.⁷⁴ However, this prior distinction between UNCCT and UNCCT/CTITF shows that from 2011-2015 CTITF was the entity and label responsible for more programs concerning Pillar IV on the protection and promotion of human rights. This previous distinction makes the UNCCT as an individual entity appear more inclined to fund projects falling under Pillar II on Preventing and Combatting Terrorism, not Pillar IV on human rights.

UNCCT'S UNDERSTANDING OF THEIR WORK



The preceding diagram is an interpretation of an existing UN graph available here: <https://www.un.org/counterterrorism/ctitf/en/uncct/executive-management>

72. The advisory board consists of 21 member states, with the European Union as a guest member. The board, as stated publicly, "Provides advice to the UNCCT Executive Director on the Centre's program of work including budget, programs and projects" The UNCCT must report to the Advisory Board on a quarterly basis in addition to submitting Annual Reports on the implementation of UNCCT projects. The other board members include: Algeria, Argentina, Belgium, Brazil, China, Egypt, European Union (Guest Member) France, Germany, India, Indonesia, Morocco, Nigeria, Norway, Russian Federation, Pakistan, Spain, Switzerland, Turkey, United Kingdom, and United States of America. UNCCT Advisory Board. The Advisory Board meets twice yearly at the Permanent Representative level.

73. Additionally, the center's ideological creation is dedicated to the Kingdom of Saudi Arabia on the "About" page stating that "In February 2005, the Kingdom of Saudi Arabia hosted the first International Counter-Terrorism Conference in Riyadh at which the late Custodian of the Two Holy Mosques, King Abdullah Bin Abdulaziz Al-Saud called upon the international community to establish an international centre to fight terrorism." UNCCT, Executive Management

74. Pg 25-69, A/70/826

4. INTEGRATED ASSISTANCE ON COUNTERING TERRORISM (I-ACT)

The Integrated Assistance on Countering Terrorism (I-ACT) is a program for better coordination of UN capacity building efforts in selected countries. This program is operated by the Office of Counter-Terrorism and lead by two individuals funded through extra-budgetary resources.

I-ACT aims to identify and fill the gaps in delivering capacity building support state's implementation of the Global Counter Terrorism Strategy. Essentially, the logic behind the I-ACT program is to map a state's counter-terrorism efforts and measures against each paragraph of the Global Counter-Terrorism Strategy to understand the state's gaps and needs to better address the terrorist threat. However, in practice conducting this mapping exercise and ensuring state ownership of the process and outcomes is very difficult, making the I-ACT more useful in theory.

The I-ACT has a web-based Information System⁷⁵ that promotes cooperation and coordination of technical assistance. Even though it is originally meant to avoid duplication and provide an interface between partnering governments and CTITF entities, CTED is actually mandated as the main body to interface with member states.

The four member states that have partnered with I-ACT are Madagascar (2008), Nigeria (2008), Burkina Faso (2009), and most recently Mali (2015). For example in 2012, CTITF conducted a mapping of UN projects in Nigeria, then developed three programs with the government led by UNESCO, CTED, and UNODC.⁷⁶ In the most recent example, until June 2017, there was no public information available on the I-ACT partnership with Mali. However, some programs were actually completed from 2016-2017, including three workshops conducted by UNODC, one of them focused on human rights compliance and the other two were conducted for Malian law enforcement by Turkey. These programs were co-funded by UNCCT and the United States.

75. <https://www.i-act-infosystem.org/#9>

76. Statement by Muhammad Rafiuddin Shah Officer-in-Charge, CTITF Office Launch of I-ACT Projects in Abuja 24 January 2012 available: http://www.un.org/en/terrorism/ctitf/pdfs/statement_at_i-act_projects.pdf

4. UN AGENCIES, OFFICES, AND PROGRAMMES

1. UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC): TERRORISM PREVENTION BRANCH (TPB)

Executive Director of the United Nations Office on Drugs and Crime (UNODC): From the Russian Federation

The Terrorism Prevention Branch (TPB) of the United Nations Office on Drugs and Crime (UNODC) provides legislative and capacity building assistance to member states in addition to creating publications and tools of counter-terrorism best practices.

The Terrorism Prevention Branch created in 1999 sits within the Center for International Crime Prevention in Vienna and predates the CTC. It was strengthened in 2002 following UNGA resolution 57/292 to “provid[e], at the request of Member States, technical assistance in prevention of international terrorism in all its forms and manifestations.”⁷⁷ The TPB offers resources including the Counter Terrorism Learning Center⁷⁸ that aims to provide courses for criminal justice officers and create an information exchange between counter-terrorism practitioners. Operationally, the TPB claims to regularly coordinate with other bodies such as CTED, I-ACT, and CTITF. For example, in accordance with its mandate, it participates in CTC/CTED country visits, assists state’s with compiling national reports for submission, and works together on additional joint projects and convening events. Finally, UNODC-TPB also works with CTITF by participating in various working groups concerning: “Preventing and Responding to Weapons of Mass Destruction Terrorist Attacks, Supporting and Highlighting Victims of Terrorism, Countering the Use of the Internet for Terrorist Purposes, Protecting Human Rights While Countering Terrorism, Border Management Relating to Counter-Terrorism, and is a co-chair of the Working Group on Tackling Financing of Terrorism.”⁷⁹ The UNODC-TPB developed a handbook on “The Use of the Internet for Terrorist Purposes”⁸⁰ and the assistance tool on the “Criminal Justice Response to Support Victims of Acts of Terrorism.”⁸¹ The TPB has its own human rights officer. As detailed in Pillar IV pertaining to human rights of the Global Counter Terrorism Strategy, UNODC is the sole organization mentioned to provide technical assistance in rule of law capacity building with states.⁸²

77. Resolution A/Res/56/88

78. UNODC Counter Terrorism Learning Platform

79. https://www.unodc.org/unodc/en/terrorism/partnerships/CTC_CTED.html

80. The use of the Internet for terrorist purposes, UNODC

81. The Criminal Justice Response to Support Victims of Acts of Terrorism

82. Paragraph 4 States “ We recognize that States may require assistance in developing and maintaining such effective and rule of law-based criminal justice systems, and we encourage them to resort to the technical assistance delivered, inter alia, by the United Nations

2. DEPARTMENT OF PEACEKEEPING OPERATIONS (DPKO): OFFICE OF RULE OF LAW AND SECURITY INSTITUTIONS (OROLSI)

Assistant Secretary-General for Rule of Law and Security Institutions: From the Russian Federation

Peacekeeping is not meant to deal with countering terrorism or preventing violent extremism, however, UN peacekeeping missions are increasingly operating in asymmetric contexts.

The Office of Rule of Law and Security Institutions (OROLSI) of the Department of Peacekeeping Operations (DPKO) is not a primary counter-terrorism body, but supports UN counter-terrorism efforts taking part in the creation of National Preventing Violent Extremism Action Plans, mainstreaming counter-terrorism concerns into security sector reform (SSR) programs, and providing capacity building assistance in creating judicial counter-terrorism units in host countries.

OROLSI's priorities fall under Pillar III of the Global Counter-Terrorism Strategy. They include doctrine and policy in asymmetric environments, how to adapt to these environments (including protection of UN personnel and facilities and protection of civilian mandates), and how DPKO can provide assistance.⁸³

During FIDH's research, it was questioned whether OROLSI duplicated similar work concerning the rule of law that CTED conducts in capacity building measures with states. OROLSI claims to be the "largest provider of police, justice and corrections specialists in the world"⁸⁴ operating in 25 countries and regions with a force of more than 14,000 deployments. Established in 2007, six years after the creation of the CTC and three years after the creation of CTED, OROLSI is constantly evolving to now tackle the "new challenges of the twenty-first century, such as violent extremists." The Secretary General's Plan of Action to Prevent Violent Extremism called on PVE to be integrated into peacekeeping and Special Political Missions, tasking OROLSI and DPKO with new initiatives. While DPKO maintains that peacekeeping is not the best tool for "counter-terrorism military/security operations" DPKO and OROLSI do engage in capacity building to counter terrorism and prevent violent extremism in ways that are similar to CTED's operational capacity (see below).

One of the mechanisms that DPKO uses in relation to the PVE strategy is the Global Focal Point arrangement for Police, Justice and Corrections Areas in the Rule of Law in Post-Conflict and other Crisis Situations (GFP) which aims to provide a "united" front that is not a merger or a new entity, but a joint operation of GFP partners and UN entities that are deployed in order to create nuanced assistance. However, the Global Focal Point has not been tasked with dealing with PVE

Office on Drugs and Crime," 60/288. The United Nations Global Counter-Terrorism Strategy, Annex 1, Pillar IV

83. FIDH Interview.

84. DPKO, Summary Doc

activities, it is focused on justice capacity building. The question remains on how these efforts complement or fit into CTED and CTITF existing projects and initiatives.

Currently, the first pilot program of DPKO to enhance state's capacity for countering terrorism and preventing violent extremism is to be developed with the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA). According to DPKO, this is being done in conjunction with UN partners in order to support the training of security forces in: investigations, first response, forensics analysis, and Counter-Improvised Explosive Device. They note that MINUSMA is playing a critical role in standing up the Specialized Counter Terrorism Judicial Unit. Following the creation of the Specialized Counter Terrorism Judicial Unit by law 21 May 2013, FIDH and its member organization in Mali, Association malienne des droits de l'Homme (AMDH) have welcomed the decision of the Malian political authorities to extend the competence of the unit to also include war crimes, crimes against humanity, genocide, and torture. As this specialized center has jurisdiction over the entire national territory, and is enjoying strengthened capacities, it is in the best position to deal with cases related to international crimes and serious human rights violations committed in the northern and central regions since 2012. However, it is unclear how the efforts in Mali are organized when each party, CTED, OROLSI (DPKO), and CTITF all engage in judicial capacity building. Considering that CTED conducts country visits with states, it was surprising to note that CTITF also conducted their own country state visit with Mali right after CTED's official delegation.

3. KEY CTITF ENTITIES

United Nations Development Program (UNDP): UNDP is currently mobilizing a \$108 million program focused on development to prevent violent extremism for 2017-2020.⁸⁵ UNDP claims to have been critically engaging on preventing violent extremism since 2014 and its regional bureau in Africa launched an initiative called "Preventing and Responding to Violent Extremism in Africa: A Development Approach." This program was initially proposed to cost \$45.7 million, but was augmented to \$81 million.⁸⁶ On September 7, 2017, UNDP released a two year study on "recruitment in the most prominent extremist groups in Africa" titled "Journey to Extremism in Africa: Drivers, Incentives and the Tipping Point for Recruitment." The report conducted interviews with 495 voluntary recruits and revealed that "71 percent of recruits interviewed said that it was some form of government action that was the 'tipping point' that triggered their final decision to join an extremist group."⁸⁷

85. Lynch, Colum, "U.N. Seeks More Than \$100 Million to Tackle Violent Extremism" <http://foreignpolicy.com/2017/03/08/u-n-seeks-more-than-100-million-to-tackle-violent-extremism/>

86. "UNDP Africa launches initiative to help prevent and respond to violent extremism": <http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2015/11/23/undp-africa-launches-initiative-to-help-prevent-and-respond-to-violent-extremism-.html>

87. UNDP, "Journey to Extremism in Africa: Drivers, Incentives and the Tipping Point for Recruitment" <http://journey-to-extremism.undp.org/en/reports>

UN WOMEN: UN WOMEN provides a gender-sensitive perspective of counter-terrorism efforts at the UN. UN WOMEN has also adopted a global program on preventing violent extremism focused in four areas:

1. research
2. policy development
3. response (increased access to justice and essential services for victims of sexual and gender-based violence in the context of violent extremism)
4. participation (increasing women's participation in counter-terrorism response and prevention efforts)⁸⁸

UN WOMEN briefed the CTC on 30 March 2017 and discussed needs to integrate gender into CTED's country analysis, reports, and technical assistance recommendations. UN WOMEN chairs the newly created CTITF working group on Gender and Counter-Terrorism and has also been continuously raising the issue of sexual violence and gender-based violence as a tactic of war and terrorism.⁸⁹ UN WOMEN is contributing to the internal work of the UN counter-terrorism structure by conducting a gender analysis of counter-terrorism work at the UN and developing a guide for UN counter-terrorism staff on gender.

United Nations Interregional Crime and Justice Research Institute (UNICRI): UNICRI is a CTITF entity that works to improve crime prevention and control policies, including counter-terrorism, with states, intergovernmental organizations, and NGOs. The Secretary General noted in his recent report on the implementation of the GCTS that UNICRI's activities are focused on Pillars I and IV of the strategy, yet there is limited publicly available information on UNICRI's programs in each of these pillars available through their website. One project of UNICRI, the planned Center of Excellence for chemical, biological, radiological, and nuclear (CBRN) mitigation in Central Asia, was placed under Pillar II in the development of capacity building assistance with the United Nations Regional Centre for Preventative Diplomacy for Central Asia (UNRCCA).⁹⁰

United Nations Regional Centre for Preventive Diplomacy for Central Asia (UNRCCA): The UNRCCA is a special political mission responsible for developing a regional plan in Central Asia to implement the GCTS. The UNRCCA's counter-terrorism activities have gone through two phases of implementing a joint plan of action where it has has carried out capacity

88. Paragraph 31, A/71/858

89. Remarks by Under-Secretary-General of the United Nations and Executive Director of UN Women Phumzile Mlambo-Ngcuka at the high-level meeting on "Global Leadership – Local Partnerships: Women's Leadership and Gender Perspectives on Preventing and Countering Violent Extremism" <http://www.unwomen.org/en/news/stories/2016/9/speech-by-executive-director-on-womens-leadership-in-preventing-and-countering-violent-extremism>

90. Page 6, "Implementing the United Nations Global Counter-Terrorism Strategy in Central Asia Concept Paper"- http://www.un.org/en/terrorism/ctitf/pdfs/centr_asia_implementing_concept_note_eng.pdf

building programs with regional states.⁹¹ The UNRCCA is not publicly noted to be a CTITF entity, but works on each of these phases with CTITF.⁹² The Special Representative and Head of UNRCCA, has briefed the Security Council on issues regarding the rise of terrorism and extremism in Central Asia, but starting with the current SRSG Petko Draganov's first briefing in September 2015 in consultations with the Security Council has broken with protocol and did not release a press statement following the meeting. UNRCCA stated that "It appeared that some Council members had objected to the initial text proposed by the penholder Russia."⁹³ All three following briefings have been done in consultations and it seems that the issue at stake in releasing a press statement had to do with UNRCCA's cooperation with regional organizations and amendments relating to the situation in Afghanistan. The Council was still not able to reach an agreement on a press statement at the meeting of the SRSG in February 2017, but were able to agree on press elements that were read by the SC president following the consultations.⁹⁴ At the most recent consultations in June 2017, there was again no agreement.

Briefings on the activities of the UNRCCA speaking on conflict prevention and terrorism in the region are contentious and must be publicly communicated in a transparent manner.

5. DUPLICATION, COORDINATION, AND EVALUATION

The ever growing number of counter-terrorism bodies that have been created over the last sixteen years create an overwhelming complex of actors. Attempts to enhance coordination have not addressed the root causes of the issue and how various entities mandates duplicate and overlap with one another, specifically on thematic issues. The UN counter-terrorism architecture has yet to provide a clear narrative to the public for how all existing bodies effectively cooperate and whether each body is absolutely necessary.

Effective counter terrorism operations at the UN would be best delivered by mainstreaming counter-terrorism into fewer bodies that have the independence to do evaluations of states and

91. For more information on the activities of each of the phases refer to the counter-terrorism activities page of the UNRCCA: <https://unrcca.unmissions.org/counter-terrorism>

92. For example please refer to the concept note for phase 1 of the UNRCCA's regional strategy: http://www.un.org/en/terrorism/ctitf/pdfs/centr_asia_implementing_concept_note_eng.pdf

93. UNRCCA Timeline September 8, 2015: <https://unrcca.unmissions.org/timeline>

94. Security Council Report Chronology of Events for UNRCCA (Central Asia): <http://www.securitycouncilreport.org/chronology/unrcca-central-asia.php> and the UNRCCA Timeline <https://unrcca.unmissions.org/timeline>

provide recommendations or with an overarching coordinating body. The most recent creation of the Office of Counter-Terrorism could have fulfilled that objective, but we fear that the OCT will not help to overcome the silos and shortcomings. In his report to review the capability of the UN system to implement the Global Counter-Terrorism Strategy, the Secretary General stated that the counter-terrorism responsibilities of UN counter-terrorism bodies “sometimes overlap”.

Some Security Council bodies, while facilitating counter-terrorism capacity-building initiatives in accordance with their mandates, end up playing an organizing and substantive role in the implementation of those initiatives. General Assembly-mandated bodies, on occasion, conduct partial assessments to identify challenges and opportunities. There are also thematic overlaps, given that a number of different entities are mandated to address similar counter-terrorism themes, even if from different angles. Such overlaps on, for example, the need to respect human rights while countering terrorism, preventing radicalisation, victims of terrorism issues, border security, and management complicate the coordination of UN efforts.

However, the report does not go further enough to detail the full scope of overlapping mandates and activities.

As various entities coordinate their efforts in the name of a one-UN approach and the UN faces the threat of budget cuts, it remains unclear how to determine each entity’s effectiveness on the ground outside of completing country visits, attending meetings, and facilitating workshops. No entity in the UN counter-terrorism structure has developed effective tools for monitoring and evaluating the impact of their activities. To date, the UN has not conducted an evaluation of the human rights compliance of its activities and programs. Similarly, UN bodies do not have the human and financial resources to conduct efficient evaluation on the effect of their recommendations, such as CTED’s inability to follow up on the implementation of their recommendations on all country visits. In order to effectively counter terrorism, the UN system must overcome its duplications, evaluate its impact, and pursue counter-terrorism policies that are evidenced-based.

1. 1267 MONITORING TEAM AND CTED

The most recent eighteenth report, published in July 2016, highlighted many of the Team’s sanctions related activities which represents its fluid mandate and flexibility. The report emphasized that ISIL creates new challenges for existing sanctions regime structures and as a result conducted research with financial, energy, antiquities trading, and ICT industries on how to best evolve. However, the Team additionally focused on emerging issues and threats posed such as foreign terrorist fighters and information and communications technology. The Team recommended ultimately that they be tasked with a “self-reporting tool in the form of a voluntary

questionnaire to encourage Member States to report on the impact of resolutions 2178 (2014), 2199 (2015, and 2253 (2015)⁹⁵and to curb the threat of ISIL.”⁹⁶

However, the report focuses on the changing nature of ISIL threats and regional trends. This raises the question whether the 1267 Monitoring Team’s efforts duplicates CTED’s mandate “to identify emerging issues, trends and developments related to resolutions 1373 (2001) and 1624 (2005).”⁹⁷ The Team is focused on issues that relate to resolution 1267 (1999) and sanctions, but it should be emphasized that the Team thematically are briefing the council on the same emerging threats as CTED posed by Foreign Terrorist Fighters and ICT. CTED is also responsible for reporting on states implementation of resolution 2178 (2014) concerning foreign terrorist fighters. The Team’s is mandated to report to each Committee on the changing nature of the threat posed by Al-Qaida, ISIL (Da’esh), and the Taliban, which are the main terrorist actors that CTED addresses in facilitating the implementation of resolution 1373 (2001) and 1624 (2005).

2. UNCCT & CTED

The UNCCT states that their vision is to become a Centre of Excellence that is working on subject matters not covered by other areas of the United Nations “such as counter-terrorism narratives, counter-radicalization, enhanced dialogue and cooperation between the development and security/counter-terrorism sectors, and terrorist use of the Internet.”⁹⁸ However, these subject matters are covered by other UN bodies such as CTED who was recently tasked to present the Security Council with a comprehensive international framework to counter terrorist narratives. It is unclear how these two organs are working together regarding emerging subject matters and how the UNCCT is the best positioned organ in order to cover emerging threats and issues. Moreover, on 19 February 2015, CTED created the CTED global research network that works with academics and civil society to engage in emerging trends. This network looks like it may act in competition to the “Centre of Excellence” envisioned by the previous Secretary General.

3. DPKO/OROLSI, CTED AND UNODC

During the course of its investigation, FIDH met with several actors who questioned whether OROLSI duplicated the efforts of CTED and UNODC in their rule of law capacity building. OROLSI does engage in capacity building with regard to counter-terrorism and preventing violent extremism in ways that are similar to CTED’s operational capacity. DPKO has initiated

95. Paragraph 61, Resolution 2253, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/629

96. Ibid, Paragraphs 63-99. The recommendations are focused within three categories: Asset Freeze (Illicit trade in oil and oil products and Denying access to the international financial system), Travel Ban, Arms Embargo, Foreign Terrorist Fighters, and Information and Communications Technology.

97. “5. Directs CTED to identify emerging issues, trends and developments related to resolutions 1373 (2001) and 1624 (2005), while taking into account the United Nations Global Counter-Terrorism Strategy, as appropriate, at all levels, in consultation with relevant partners, and to advise the CTC on practical ways for Member States to implement resolutions 1373 (2001) and 1624 (2005);”S/RES/2129 (2013)

98. UNCCT Vision

a project to develop national guidance tools to help host countries with security sector and rule of law programs including: adoption of legal frameworks, national PVE action plans, capacity building of terrorism prosecution efforts, prevention of radicalization in prisons, border management, and mainstreaming counter-terrorism efforts into SSR programs.⁹⁹ These national capacity building projects are said to be developed in coordination with CTED, and UNODC, however it is unclear who is tasked with what and if it is vital that each entity be involved.

The first pilot program of DPKO to enhance states' capacity for countering terrorism and preventing violent extremism is being developed with MINUSMA in Mali. According to DPKO, this is being done in coordination with UN partners in order to support the training of security forces in: investigations, first response, forensics analysis, and Counter-IED. They note that the MINUSMA is playing a critical role in standing up the Specialized Counter Terrorism Judicial Unit. While many of these organs claim to be working in coordination concerning rule of law programs, it is key to highlight that UNODC is the only body reference to deliver technical assistance relating to rule of law capacity building in the Global Counter Terrorism Strategy.¹⁰⁰ It is unclear how these efforts are organized and delegated amongst each UN entity, as CTED, OROLSI (DPKO), and UNODC all engage in judicial capacity building.

4. IACT & CTC/CTED

The I-ACT Initiative claims to “provide an interface with partnering governments” and to be a “unique catalyst for integrated technical assistance delivery” by CTITF entities.¹⁰¹ However, this initiative seems to duplicate CTED, whose core mandate requires them to interface with state authorities, determine gaps, and facilitate technical assistance for requesting states in order to implement relevant UNSC resolutions. The I-ACT tries to differentiate itself by being a “unique catalyst” for technical assistance by leveraging the UN system and providing “bridge” funding, but it is not clear if it duplicates CTED’s facilitation of technical assistance and assessments. CTED’s old website details a directory of donors working to facilitate technical assistance which includes other CTITF entities, such as UNODC-TPB and OHCHR.¹⁰² CTED is a CTITF entity making the comparison between the two more complex. Ultimately, the relationship between CTITF, the I-ACT initiative, and CTED should be made explicitly clear. The I-ACT initiative has partnered with countries that CTED has visited and provided recommendations to. The question remains how I-ACT’s interfacing and mapping of technical assistance programs is different from the original CTED mandate.

99. DPKO, Preventing Terrorism and Violent Extremism Document

100. Annex, Pillar IV, Paragraphs 4. A/RES/60/288

101. Integrated Assistance on Countering Terrorism (I-ACT) <https://www.un.org/counter-terrorism/ctitf/en/integrated-assistance-countering-terrorism-i-act>

102. “List of donors working with CTED to provide technical assistance” <http://www.un.org/en/sc/ctc/technical-assistance.html>

5. 1566 WORKING GROUP AND CTITF WORKING GROUPS

The 1566 working group was originally tasked with looking into options to set up a compensation fund for victims of terrorism. In fulfilling that part of its mandate, the working group held consultations with Jean-Paul Laborde who worked at CTITF at the time. It was raised whether the 1566 Working Group's mandate was duplicating efforts of the CTITF Working Group concerning Supporting and Highlighting Victims of Terrorism. Additionally, resolution 1617,¹⁰³ tasked the 1566 Working Group to look into terrorist incitement through terrorist propaganda disseminated through media and the internet. However, it is important to note that there is a CTITF Working Group, Countering the Use of the Internet for Terrorist Purposes, also tasked to deal with issues of incitement and terrorist propaganda. Therefore, the 1566 Working Group is duplicating efforts as it is not one of the CTITF 38 member entities.

6. DEFINITION OF TERRORISM: AD HOC COMMITTEE ON TERRORISM VS. SECURITY COUNCIL

The negotiations surrounding the draft comprehensive convention on terrorism have stalled as member states have not come to a consensus regarding the definition of terrorism. The only operational definition of terrorism has been outlined by UNSC resolution 1566 (2004) adopted under Ch. VI which "defines" terrorism in operative paragraph 3.¹⁰⁴ The tension between the UNSC and the UNGA to be the sole body tasked to deal with terrorism was further exemplified in the most recent review of the Global Counter Terrorism Strategy that it is "Convinced that the General Assembly is the competent organ, with universal membership, to address the issue of international terrorism."¹⁰⁵ In 2012, the representative of Switzerland, stated that the "finalization of a comprehensive convention on terrorism would underscore the General Assembly as an organ whose legitimacy was universally recognized and one which had unique authority in setting standards, including those in the area of combating terrorism."¹⁰⁶ However, while it might be the competent organ, it has not been the most effective organ in defining terrorism so far.

103. "Expressing its concern over the use of various media, including the Internet, by Al-Qaida, Usama bin Laden, and the Taliban, and their associates, including for terrorist propaganda and inciting terrorist violence, and urging the working group established pursuant to resolution 1566 (2004) to consider these issues," S/RES/1617 (2005)

104. 3. Recalls that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offenses within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature; S/RES/1566 (2004)

105. Paragraph 10, Fifth Review, Global Counter Terrorism Strategy, A/70/L.55

106. Legal Committee Urges Conclusion of Draft Comprehensive Convention on International Terrorism" <https://www.un.org/press/en/2012/gal3433.doc.htm>

6. UN COUNTER-TERRORISM LEADERSHIP

It is striking to observe that each body and organ created under the General Assembly, Secretariat and the Security Council is currently guided by rotating leadership that was selected from the same small group of countries who have managed to hold onto the operational structure of the UN Counter-Terrorism Complex.

As of August 2017, the UN counter-terrorism leadership is organized as follows :

- Office of Counter-Terrorism (OCT)
 - Head : Under-Secretary General from the **Russian Federation**
- CTITF Chair: Under Secretary General (OCT) from the **Russian Federation**
 - Director of the UN Counter-Terrorism Implementation Task Force (CTITF) and the UN Counter-Terrorism Centre (UNCCT): from **Pakistan** and previously an advisor to the UN mission of **Saudi Arabia**¹⁰⁷
- UNCCT
 - Chair of the Advisory Board: **Saudi Arabia**
- UNODC
 - Executive Director: from the **Russian Federation**
- Ad Hoc Committee on Terrorism
 - Chairman of Ad Hoc Committee of Terrorism: **Sri Lanka**
 - Chair of UNGA's Sixth Committee: **Israel (no longer Chair as of September 2017)**
- The Counter-Terrorism Committee (CTC)
 - Chair: **Egypt**
 - Vice-Chairs: **Ethiopia, France and Russian Federation**
- Counter-Terrorism Executive Directorate (CTED)
 - New Executive Director: from **Belgium**
 - Previous Executive Director: from **France**
 - Deputy Executive Director: from **China**
 - Director: from **Israel**
- Security Council Committee pursuant to resolution 1267 (1999), 1989 (2011), and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities
 - Chair: **Kazakhstan**
 - Vice Chairs: **Russian Federation and Uruguay**
- Working Group established pursuant to resolution 1566 (2004)
 - Chair: **Egypt**
 - Vice-Chairs: **Ethiopia, France and Russian Federation**
- Security Council Council Committee established pursuant to resolution 1540 (2004)
 - Chair: **Bolivia (Plurinational State of)**
 - Vice-Chairs: **Senegal, Sweden and United Kingdom of Great Britain and Northern Ireland**

107. CTITF Senior Officials <https://www.un.org/counter-terrorism/ctitf/en/senior-officials>

The UN counter-terrorism complex, its leadership, and its activities should be analyzed in light of the underlying political motivations of the states that exercise control over it. In the UN counter-terrorism architecture, it is clear that a few member states have been able to select candidates for key leadership positions, hold the chairmanship of counter-terrorism related committees, and ultimately exert control over the structure and its activities.

These states, among which Russia, Egypt, and Saudi Arabia in particular understandably have an interest in fighting terrorism on their own territory in addition to stemming the flow of foreign terrorist fighters from their states. However, they also have a history of violating fundamental freedoms in the fight to counter terrorism and using counter-terrorism measures to legitimate a crackdown on dissidents. FIDH cautions that without independent oversight with a focus on the promotion and protection of human rights, these leaders may pursue non human rights compliant measures based on their national models at the international level. In that respect, the selection of the new USG of Counter-Terrorism from the Russian Federation may add to our concern.

It is important to highlight that Russia, China, and Kazakhstan, all current members of the Security Council, are also founding members of the Shanghai Cooperation Organization (SCO), whose framework to counter the Three Evils of “terrorism, separatism, and extremism” has resulted in grave human rights violations as documented by FIDH.¹⁰⁸

Other states such as the United States and France, who typically call for protection of human rights, have not demonstrated a genuine commitment in protecting fundamental freedoms and human rights in their counter-terrorism measures.

Besides, based on the principles of the UN Charter and respect for state sovereignty, no UN counter-terrorism entity has the authority to independently investigate a state’s compliance with counter-terrorism measures or exert oversight. States must report to the CTC/CTED on their implementation of Chapter VII resolutions 1373 and 1624 and can invite the CTC/CTED to conduct a gap analysis assessment, but neither the CTC/CTED nor any other entity can conduct independent monitoring of states implementation. Thus, UN entities’ analysis of terrorism does not account for the underlying political dynamics of states that impact global terrorism.

This poses a major problem as studies, independent reports and analysis provided by civil society show that the rise of terrorist actors and the behaviour of states are inextricably linked, given that the states’ human rights abuses on their population are among the key drivers of terrorist

108. FIDH “Shanghai Cooperation Organisation: a vehicle for human rights violations” <https://www.fidh.org/en/region/europe-central-asia/publication-of-a-report-shanghai-cooperation-organisation-a-vehicle>

recruitment and states' use of counter-terrorism as a means of supporting a deeper political agenda threaten the genuine desire to stop terrorist threats.

RUSSIAN FEDERATION

Russia has demonstrated a very proactive domestic counter-terrorism effort, and a stated desire to impact the UN's work. Last year, the Deputy Head of Russia's National Anti-Terrorism Committee stated that:

"the crucial point of our approach to counter-terrorism is that Russia has been actively supporting the leading role of the United Nations, as well as of the Security Council and its Counter-Terrorism Committee in this field."¹⁰⁹

However, Russia has not shown any commitment to or best practice of human rights compliance in combating "terrorism" domestically. Given Russia's influence in all branches of the counter-terrorism architecture, we fear that Russia will push to harmonize those practices at the international level.

Russia's fight against "terrorism" is geopolitically important on two fronts: the conflict in the Northern Caucasus and the annexation of Crimea from Ukraine. In this regard, their leadership taken at the international level can effectively endorse their domestic counter-terrorism and counter-extremism campaigns, which have dire human rights consequences.



Russian President Vladimir Putin (R) speaks with Defence Minister Sergei Shoigu as they attend a ceremony for Russia's Navy Day in Saint Petersburg on July 30, 2017.
AFP Photo
Alexander Zemlianichenko / POOL / AFP

¹⁰⁹. Speech given by Mr. Yevgeny Ilyin the Deputy Head of the National Anti-Terrorism Committee to CTED on November 10th 2016

The fight against terrorism and extremism in the Northern Caucasus has been used by the authorities to strengthen repressive methods of policing and exert political and social control over all other regions. In 2009, FIDH documented extensively the grave human rights violations perpetrated during counter-terrorism operations conducted in Chechnya and neighboring Republics of Ingushetia, Kabardino-Balkaria, and Dagestan¹¹⁰ after 2006.

The head of the National Anti-terrorism Commission and FSB (Federalnaya Sluzhba Bezopasnosti) stated that “over the past five years, we ha[ve] practically decimated Russia’s all-national statistical record of terrorism- related crimes (36 incidents recorded in 2015 versus 365 in 2011). In particular, no large-scale terrorist attack has occurred in the Russian Federation over the past three years.”¹¹¹ However, this success does not mean that Russia believes it has eradicated terrorist threats. Recently, a large counter-terrorism operation (CTO) that was conducted by the Chechen Ministry of Internal Affairs and the National Guard on January 11th, 2017, demonstrates that Russia’s “success” is not absolute.¹¹² This past year in 2016 it was reported that the number of victims of armed conflict in Chechnya actually increased by 43% signaling a resurgence of conflict in the Northern Caucasus.¹¹³

Russia espouses its success in countering terrorism, but this is a false narrative. However, the domestic terrorist threat in Chechnya has geopolitical consequences over the war in Syria and the international community at large. The Russian Ministry of Internal Affairs reported that their work had been so successful that they only counted 19 individuals from Chechnya joining ISIS in Syria in 2016.¹¹⁴ But, this successful counter-terrorism story is challenged by Russian President Vladimir Putin himself, stating that approximately 4,000 Russian citizens would be fighting in Syria¹¹⁵, which would make Russia the third largest contributor of fighters to ISIS, according to the Soufan Group.¹¹⁶

Some political strategists have questioned whether Russia’s fight against terrorism in Syria is genuine given that many of Russia’s domestic terrorist threats had traveled out of their territory thus keeping their risk of a domestic attack low.¹¹⁷ Similarly, some US generals are claiming that

110. FIDH Report, Russian Society Under control: Abuses in the fight against extremism and terrorism, 2009 https://www.fidh.org/IMG/pdf/Russian_society_under_control.pdf

111. Speech given by Mr. Yevgeny Ilyin the Deputy Head of the National Anti-Terrorism Committee to CTED on November 10th 2016

112. Translation “Ramzan Kadyrov: the terrorists liquidated on January 11 wanted to seize the tank unit” <http://www.kommersant.ru/doc/3193693?stamp=636228691304432651>

113. Translation “In Chechnya in 2016, the number of victims of armed conflict increased by 43%” <https://www.kavkaz-uzel.eu/articles/296892/>

114. “Ministry of Internal Affairs in 2016 has counted 19 who went to the Syrian rebels Chechen residents” <https://www.kavkaz-uzel.eu/articles/296610/>

115. “4,000 Russian nationals fight among militants in Syria - Putin” <http://tass.com/politics/932573>

116. The Soufan Group: “FOREIGN FIGHTERS: An Updated Assessment of the Flow of Foreign Fighters into Syria and Iraq” available: http://soufangroup.com/wp-content/uploads/2015/12/TSG_ForeignFightersUpdate3.pdf

117. Rahimov, Rahim: “Why Putin May Not Want to Defeat ISIS in Syria” <http://www.newsweek.com/why-putin-may-not-want-defeat-isis-syria-565255>

Russia is currently supporting the Taliban in Afghanistan, a listed terrorist entity, which begs one to question how serious Russia's efforts are to counter-terrorism internationally.¹¹⁸

Secondly, the conflict and violence in Ukraine has been instrumentalized in Russia's fight against extremism in particular. Russia's annexation of Crimea on 18 March 2014 sparked dissenting voices in Russia that were critical of Russia's moves. However, under Russia's criminalization of "extremism," it is legally empowered to crack down on those critical domestic voices. The SOVA Center for Information and Analysis¹¹⁹ has extensively documented abuses committed in this framework such as a crackdown on individuals who reposted Crimea-related articles on social media. This was particularly prevalent during the 2014-2015 crisis. However as the fighting intensifies in Eastern Ukraine, Russia is still repressing those who are supportive of Ukraine. For example, Natalia Sharina, the head of a Ukrainian Library in Moscow that was an emblem of Russian-Ukrainian friendship, was charged with extremism as "inciting hatred" and "embezzlement" of library funds. In court, Sharina claimed that the banned literature had been planted by the police, but the judge who presided over her case dismissed every defense and testimony of those who saw the police plant the materials while the prosecutor called her an "agent of Ukrainian nationalism."¹²⁰ The books have since been destroyed, but this demonstrates how the conflict in Ukraine is integral to the Russian's crackdown on "extremism," a term adopted by the international community in the context of "preventing violent extremism."

Russia has gradually positioned itself to become the dominant player in the increasingly key focus of the UN's peace and security architecture that gains unanimous support, by selecting candidates for key counter-terrorism positions and now selected a candidate for the position of USG for counter-terrorism.

118. "US general: Russia may be supplying Taliban fighters" <http://www.aljazeera.com/news/2017/03/general-russia-supplying-taliban-fighters-170323161613169.html>

119. <http://www.sova-center.ru/en/>

120. "Ex-head of Ukraine library in Moscow Natalia Sharina guilty" <http://www.bbc.com/news/world-europe-40162173>

PEOPLE'S REPUBLIC OF CHINA

China's role in developing international counter-terrorism policy and supporting Russian initiatives at the UN must be evaluated in light of China's geopolitical motivations and national interests. China's geopolitical and national interests are served through UN counter-terrorism activities on two fronts, by legitimizing China's repressive counter-terrorism measures that target certain ethnic groups, notably Uyghurs and Tibetans, and by protecting Chinese international economic and political interests. China values the UN's role in counter-terrorism. China's Foreign Minister Wang Yi stated following the 2015 Paris terrorist attacks that "The UN's leading role should be brought into full play to combat terrorism, and a united front in this regard should be formed."¹²¹ China is a member of the CTC and as a permanent member of the Security Council wields power in developing the UNSC counter-terrorism initiatives, though it has not taken strong public initiative on counter-terrorism programming at the UN. However, China has aligned itself with Russia and Kazakhstan, who are also members of the Security Council, leaders in counter-terrorism entities, and founding members of the Shanghai Cooperation Organisation (SCO).

UN counter-terrorism measures serve as an international endorsement for China's domestic counter-terrorism policies that are not human rights compliant, under the notion of combating "double standards" in the fight against terrorism. China is vocal in the UNSC about the issue of "double standards" in countering-terrorism, otherwise understood as western criticisms of their crackdown in Xinjiang, a region dominated by those of Uyghur ethnicity, to sequester the East Turkistan movement. However, as is detailed in the final section of this report, these criticisms are warranted as China has violated the fundamental freedoms of and targeted the people of Uyghur ethnicity in Xinjiang and Tibetans in the Tibetan Autonomous Region, under the guise of national security and counter-terrorism. In September 2002, China was successful in getting the East Turkistan Islamic Movement listed on the Al Qaida sanctions list.¹²² When China held the UNSC Presidency in 2016, they submitted a letter to the Secretary General regarding an open debate on terrorism to state that:

*"Member states are encouraged to focus on... Avoiding double standards in the fight against terrorism. Terrorism cannot and should not be associated with any particular nationality, religion or civilization... Terrorism poses a global threat, from which no Member State is exempt."*¹²³

121. "Chinese FM calls for united front to fight terrorism" http://news.xinhuanet.com/english/2015-11/16/c_134819141.htm

122. "Narrative summaries of reasons for listing: East Turkistan Islamic Movement", United Nations Security Council, 7 April 2011, https://www.un.org/sc/suborg/en/sanctions/1267/eq_sanctions_list/summaries/entity/eastern-turkistan-islamic-movement

123. Letter Dated 1 April 2016 from the Permanent Representative of China to the United Nations addressed to the Secretary-General: S/2016/306

This was also pressed during the 70th session of the UNGA when China stated “Terrorism is the common enemy of mankind...There must be no double standards, no particular ethnicity or religion.”¹²⁴ In 2015, a spokeswoman for the Chinese Ministry of Foreign Affairs said:

“We cannot understand why terrorism, when taking place in other countries, is regarded as terrorism but ethnic and religious issues, when taking place in China. And we cannot understand why other countries’ counter-terrorism acts are justified, but China’s counter-terrorism actions are so-called repression of ethnic groups...I think it’s ridiculous, the logic is ridiculous and is out of political prejudice and double standards. We cannot categorize terrorism as good or bad terrorism because terrorism is the enemy of the entire mankind.”¹²⁵

Under this reasoning, the call for for eliminating “double standards” is an attempt for China to get its own counter-terrorism members endorsed by the international community.



Chinese Ambassador Being Interviewed 08 March 2017
UN Photo/Manuel Elias

China has an interest to take more of a leadership role in international counter-terrorism efforts as it assumes greater global leadership and expands its sphere of influence into new oceans, new continents, new industries, and multilateral fora. In this regard, China has also been expanding their military might by increasing investments, specifically in its navy, as seen in the South and East

124. Statement by Mr. Li Yongsheng on Measures to eradicate international terrorism: 70th Session of the UN General Assembly: <http://www.china-un.org/eng/chinaandun/t1306315.htm>

125. Wall Street Journal “China Doubles Down on Terrorism ‘Double Standards’ Accusation” <https://blogs.wsj.com/chinarealtime/2015/12/03/china-doubles-down-on-terrorism-double-standards-accusation/>

China Seas.¹²⁶ China's has also been expanding its international political role from participating more in peace negotiations in Afghanistan¹²⁷ to expanding its troop contributions to United Nations peacekeeping missions.¹²⁸ For example, with China's new role in Afghanistan, China's activities are challenged by terrorist groups such as Haqqani Network and ISIS/Da'esh, whose footprint grows in the country with the future of the US's engagement in flux. As a troop contributing country to UN peacekeeping operations, Chinese troops have to grapple with asymmetric environments as peacekeeping missions are deployed in seven of the eleven countries most affected by terrorism.¹²⁹ China has since become involved in coalitions to defeat ISIS/Da'esh with the adoption of a new counter terrorism law that allows China to conduct counter-terrorism operations abroad with the consent of the country.¹³⁰



China MINUSMA soldiers 07 February 2017
UN Photo/Harandane Dicko

China's push for increased international cooperation in countering terrorism is also underpinned by China's global diaspora that increasingly live and conduct business in countries affected by terrorism and its economic reach. For example, as of 2016 there were "3,000 Chinese nationals in Mali, 65,000 in Nigeria, and more than 10,000 each in Iraq and Pakistan."¹³¹ Similarly, the European Council on Foreign Affairs notes that over 128 million Chinese traveled overseas in 2015 for all sorts of business opportunities and tourism and a leading Chinese academic journal noted that

126. One of the reasons cited for China's naval expansion is the need to rescue its diaspora from hot spots around the world, spots that increasingly are implicated by terrorist actors. For example, in 2011, China evacuated more than 1,800 Chinese nationals from Libya in the wake of the uprising, but in Libya before the unrest began there were 36,00 Chinese workers on state-owned companies and military. The evacuation was the largest the PRC has have launched Chapter 5: International rescue: Beijing's mass evacuation from Libya" <https://www.iiss.org/en/publications/adelpi/by%20year/2015-9b13/chinas-strong-arm-63b7/ap451-07-chapter-5-7ffb>

127. The Afghan Peace Talks, QCG and China-Pakistan Role: <http://thediplomat.com/2016/07/the-afghan-peace-talks-qcg-and-china-pakistan-role/> in addition to China Considers Larger Role in Afghanistan Peace Process" https://www.nytimes.com/2016/01/25/world/asia/china-considers-larger-role-in-afghanistan-peace-process.html?_r=0

128. China's Troop Contributions to U.N. Peacekeeping" <https://www.usip.org/publications/2016/07/chinas-troop-contributions-un-peacekeeping>

129. Boutellis, Fink: "Waging Peace: UN Peace Operations Confronting Terrorism and Violent Extremism" <https://www.ipinst.org/2016/10/un-peaceops-confronting-terrorism-extremism>

130. China's New Grand Strategy for the Middle East <http://foreignpolicy.com/2016/01/26/chinas-new-middle-east-grand-strategy-iran-saudi-arabia-oil-xi-jinping/>

131. Analysis conducted by Mathieu Duchatel in "Terror overseas: understanding China's evolving counter-terror strategy" from MOFCOM country reports and investment guides from 2014/2015 that are available at <http://fec.mofcom.gov.cn/article/gbdqzn/>.

3,969 Chinese companies were registered in a so-called “arc of instability” located in the area from Afghanistan and Pakistan to the Sahel.¹³²

Finally, China has used the United Nations counter-terrorism sanctions regime to reinforce its bilateral relationships. As reported in 2015 and 2016, China was successful in blocking listings of individuals and entities on behalf of Pakistan.¹³³ This shows the influence that China can wield as a UNSC permanent member in counter-terrorism measures and how placing the interests of one state over counter-terrorism cooperation undercuts the UN’s efforts.

KINGDOM OF SAUDI ARABIA

Saudi Arabia with two donations totaling \$110 million dollars, created the United Nations Counter-Terrorism Centre (UNCCT). The UNCCT aims to be a “centre of excellence,” but in reality it could exert disproportionate and negative influence over counter-terrorism at the UN, from a human rights approach. The UNCCT, with the same senior leadership as CTITF, exercises extensive control as the sole funding branch for counter-terrorism capacity building, which in practice means that all UN counter-terrorism entities that want to conduct a program must seek out funds from the UNCCT. This puts it and Saudi Arabia as the chair of the Advisory Board in a powerful position to select the priorities and programs of UN capacity building initiatives such as their new 5 years program. UNCCT/CTITF, predominantly funded through extrabudgetary resources from Saudi Arabia, actually drafted the Secretary General’s report that outlined the full proposal for the OCT and conceptualized the future of the UN counter-terrorism architecture.



132. Mathieu, Duchatel, Terror overseas: understanding China’s evolving counter-terror strategy: http://www.ecfr.eu/publications/summary/terror_overseas_understanding_chinas_evolution_counter_terror_strategy7160#_ftn7 The author drew the tabulations from Chinese language article available: Liu Qingtian and Fang Jincheng, “The New Development of Terrorism and Its Influence on China”, Guoji wenti yanjiu (Journal of International Studies), Autumn 2015 and from the statistics provided by the Consular Protection Service of the Chinese Foreign Ministry which is only provided for in Chinese.

133. “At UN, China blocks India bid to ban JeM chief Masood Azhar”, the Indian Express, 1 April 2016, <http://indianexpress.com/article/india/india-news-india/at-un-china-blocks-india-bid-to-ban-jem-chief-masood-azhar-pathankot-attack/>. And Smriti Kak Ramachandran, “China blocks bid for U.N. action on Pak. over Lakhvi”, The Hindu, 3 July 2015, <http://www.thehindu.com/news/national/china-blocks-bid-for-un-action-on-pak-over-lakhvi/article7347637.ece>.

We understand that countering terrorism is a priority for Saudi Arabia as according to their official records, there have been 3178 victims of terrorism since 1987.¹³⁴ However, the fight against terrorism has become the centerpiece of the Kingdom's foreign policy engagements questioning the Kingdom's genuine desire to fight against terrorism. This was the focus at the recent Riyadh Summit where Saudi Arabia and the United States' Trump Administration announced the creation of a joint "Terrorist Financing Targeting Center"¹³⁵ and opened, along with Egypt, the Kingdom's new "Global Center for Combatting Extremist Ideology," served by the new UN Framework to Counter Terrorist Narratives.

During President Trump's visit, neither he nor Secretary of State Rex Tillerson raised the issue of the human rights situation in Saudi Arabia. However, Secretary Tillerson did raise the issue of the human rights situation in Iran, the regional rival, and President Trump delivered a speech where he stated that:

*"No discussion of stamping out this threat would be complete without mentioning the government that gives terrorists all three—safe harbor, financial backing, and the social standing needed for recruitment. It is a regime that is responsible for so much instability in the region. I am speaking of course of Iran. From Lebanon to Iraq to Yemen, Iran funds, arms, and trains terrorists, militias, and other extremist groups that spread destruction and chaos across the region. For decades, Iran has fueled the fires of sectarian conflict and terror."*¹³⁶

Then, just a few weeks following the summit, on June 5th 2017, Saudi Arabia along with other gulf states (including the United Arab Emirates which recently donated \$300,000 to the UNCCT mere weeks before) cut ties with its neighbor Qatar seen as a close ally of Iran. The Kingdom's reason for cutting off ties cited that "proceeding from the exercise of its sovereign right guaranteed by international law and the protection of national security from the dangers of terrorism and extremism."¹³⁷ Shortly after, President Trump tweeted "So good to see the Saudi Arabia visit with the King and 50 countries already paying off. They said they would take a hard line on funding... extremism, and all reference was pointing to Qatar. Perhaps this will be the beginning of the end to the horror of terrorism!"¹³⁸ Saudi Arabia is painting itself as the global partner in countering terrorism. Using "terrorism and extremism" as a justification by Saudi Arabia may be deemed

134. UNSpecial Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to Saudi Arabia. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21584&LangID=E#sthash.8gFTCI70.dpuf>

135. U.S. and Saudi Arabia to Co-Chair New Terrorist Financing Targeting Center
<https://www.treasury.gov/press-center/press-releases/Pages/sm0092.aspx>

136. Transcript of Trump's speech in Saudi Arabia
<http://www.cnn.com/2017/05/21/politics/trump-saudi-speech-transcript/index.html>

137. Saudi Arabia cuts ties to Qatar, cites 'terrorism'
<http://www.reuters.com/article/us-gulf-qatar-saudi-arabia-idUSKBN18W09H?il=0>

138. Tweets dated 6 Jun 2017

hypocritical, as some argue that Saudi Arabia has materially and ideologically given rise to terrorist actors.

While Saudi Arabia aims to combat some forms of terrorism, it is also seen as contributing to its spread. It is now a well known fact that fifteen of the nineteen attackers on 9/11 were Saudi citizens, Osama Bin Laden himself was Saudi, and Saudi Arabia is the second largest source of foreign terrorist fighters for ISIL (Da'esh)¹³⁹. As Saudi Arabia cuts ties with Qatar for reasons of sponsoring and funding "terrorism and extremism," support from the al-Saud family and Saudi charities have touched most of the Muslim world by establishing mosques and training imams that spread Wahhabism, an ideological instrument of many terrorist groups. For example, ISIL (Da'esh) adopted official Saudi wahabi textbooks for its schools before they published their own. In ISIL (Da'esh) controlled territories, most of the books re-published for consumption in ISIL territories¹⁴⁰ are by Muhammad Ibn Abd Al-Wahhab, the founder of Wahhabism, the Saudi school of Islam.

In addition to propagating an ideological foundation, there are also allegations that Saudi Arabia has provided material support to terrorist actors. The result of this was highlighted by the Special Rapporteur on Counter-Terrorism and Human Rights who noted about Syria that he is,

*"concerned at allegations that some of the most violent armed groups involved in "jihad", and which have been committing serious human rights violations in that country, appear to have enjoyed various forms of support, financial and logistical, implicating sources inside Saudi Arabia, despite the Government's expressed commitment to stem all terrorist financing."*¹⁴¹

He called on this matter to be investigated by the new International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic. If there are no forms of support to report, Saudi Arabia should be open to a comprehensive investigation.

Furthermore, Saudi Arabia has used the rhetoric of terrorism as a means for domestically silencing dissent, further questioning their genuine desire to counter terrorism at the international level. The former Special Rapporteur on Counter-Terrorism and Human Rights, Ben Emmerson was invited to conduct a visit to Saudi Arabia from 30 April to 4 May 2017 and has initially raised

139 "The Soufan Group: "FOREIGN FIGHTERS: An Updated Assessment of the Flow of Foreign Fighters into Syria and Iraq" available: http://soufangroup.com/wp-content/uploads/2015/12/TSG_ForeignFightersUpdate3.pdf

140. Shane, Scott, 'Saudis and Extremism: 'Both the Arsonists and the Firefighters'" <https://www.nytimes.com/2016/08/26/world/middleeast/saudi-arabia-islam.html?mcubz=3>

141. UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to Saudi Arabia. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21584&LangID=E#sthash.8gFTCI7O.dpuf>

many concerns, particularly about the “use of the 2014 counter-terrorism law and other national security provisions against human rights defenders, writers, bloggers, journalists and other peaceful critics.”¹⁴² The Special Rapporteur believes that the definition in the 2014 Law on Counter Terrorism and its Financing “fails to comply with international human rights standards of legal certainty” as:

“article 1 of 2014 Law enables the criminalization of a wide spectrum of acts of peaceful expression, which are viewed by the authorities as endangering “national unity” or undermining “the reputation or position of the State.”¹⁴³

The Special Rapporteur recommended that the state establish an “Independent National Security and Due Process Review Mechanism” that would be able to review whether the alleged crimes violate the rights to freedom of expression, religion, peaceful assembly, among others. In addition, the Special Rapporteur also shared a list of nine individuals who were found to be deprived of liberty after having their cases reviewed by the Working Group on Arbitrary Detention. He also raised the issue of reports of torture and ill-treatment of terrorist suspects that are not met independently investigated and the fact that some suspects had never met with a defense lawyer during their investigation. Finally, he raised all of these issues in light of enforced death penalty where in 2016, at least 50 people were sentenced to death and 47 were publicly beheaded or executed by a firing squad for terrorist offenses. The Special Rapporteur’s preliminary findings clearly illustrate that Saudi Arabia should not be a state trusted to develop human rights compliant counter-terrorism measures or favor activities that fall under Pillar IV of the GCTS.

Civilian casualties have yet to be fully independently investigated and publicly communicated. Saudi Arabia has failed to conduct credible, impartial and transparent investigations into possible war crimes and has used its position on the Human Rights Council, aided by its allies, to effectively obstruct the creation of an independent international investigation, as urged by the UN High Commissioner for Human Rights. A national commission of inquiry set up by the internationally recognized Yemeni government, backed by Saudi Arabia, has to date failed to carry out credible investigations into violations in the conflict. Moreover, Saudi Arabia has used the threat of withdrawing funds from critical UN programs to compel the UN Secretary-General to remove the coalition from his “List of Shame” for killing and maiming children and attacking schools and hospitals in Yemen.¹⁴⁴

142. Ibid.

143. Ibid.

144. FIDH “Suspend Saudi Arabia from the UN Human Rights Council,” <https://www.fidh.org/en/region/north-africa-middle-east/saudi-arabia/suspend-saudi-arabia-from-the-un-human-rights-council>

EGYPT

Egypt, a member of the Organisation of Islamic Cooperation (OIC) along with Saudi Arabia (UNCCT) and Pakistan (Representative lead CTITF), is the chair of the CTC and the 1566 Committee. Egypt exerts significant influence on the UN's counter-terrorism priorities, with support of the OIC, to capitalize on its seat at the Security Council and protect the interests of its allies. Before assuming its position on the Security Council, Egypt fought hard to obtain the leadership of the Counter-Terrorism Committee.

Egypt has complained about the lack of international solidarity with its efforts to counter-terrorism. In a recent interview with Foreign Policy magazine, Foreign Minister Sameh Shoukry recalled that Egypt is constantly viewed as a culprit as opposed to a victim.¹⁴⁵ He denied all claims that Egypt has imprisoned thousands of human rights defenders, journalists, and dissenting voices. Specifically dispelling the fact that at least 41,000 people were detained, charged, or sentenced between July 2013 and May 2014, this number is projected to have reached over 100,000 detainees, but has yet to be confirmed. These figures are compounded by what the United Nations referred to as a "mockery of justice" with at least 470 court ordered death sentences for terrorism related charges and alleged political violence in 2015 alone, a year before Egypt assumed its position on the Security Council.¹⁴⁶

Egyptians have been the victim of indiscriminate terrorist attacks demanding an effective counter-terrorism strategy. These attacks have increased with ISIL's (Da'esh) growing presence in Northern Sinai where a state of emergency was declared in October 2014. Egypt then went to the next level and declared a national state of emergency on April 9th, 2017 for three-months, after twin attacks allegedly committed by ISIL (Da'esh) on Palm Sunday in Coptic churches, claiming the lives of over 45 people. However, despite the state of emergency, Egypt's counter-terrorism efforts have done little to effectively counter the threat of terrorist acts (they may, in some instances, have contributed to fuel radicalization), but have allowed counter-terrorism legislation to be a legal cover to silence dissent and eliminate the space for civil society.

Egypt has been seeking international solidarity in designating the Muslim Brotherhood as a terrorist organization and as a means to internationally endorse their draconian counter-terrorism measures to facilitate a political agenda that silences dissent. Currently, the Muslim Brotherhood

145. "Egypt's Top Diplomat Denies Cairo is Cracking Down on Dissidents" <http://foreignpolicy.com/2016/02/08/egypts-top-diplomat-denies-cairo-is-cracking-down-on-dissidents/>

146. FIDH "Five years after the revolution : Egypt's Poorest Human Rights Record in its Modern History" <https://www.fidh.org/en/region/north-africa-middle-east/egypt/five-years-after-the-revolution-egypt-s-poorest-human-rights-record>

is designated as a terrorist organization in Egypt under President Sisi. Egypt has indirectly targeted the Muslim Brotherhood as the source of terrorist ideology through the concept of countering terrorist narratives at the UNSC, further detailed later in this report.

Egypt, as the Chair of the CTC, can exert as much pressure as it cares to assume in its chairmanship. Other Chairs of the CTC have taken a less strong convening authority, but Egypt has fully exercised all aspects of its chairmanship to shape the priorities of the CTC and CTED. In its role as the CTC Chair, Egypt is similarly bound to ensure that measures are taken to comply with international law. Yet, Egypt's domestic counter-terrorism practices have been used as a political tool to silence human rights defenders, journalists, and dissenting voices, in addition to suffocating civil society organizations through draconian NGO bills in the name of national security. Egypt should not be trusted to lead counter-terrorism efforts that centralize human rights at the international level without demonstrating its genuine commitment to protecting national security in compliance with international law.

UNITED STATES

The United States, a permanent member of the Security Council, has typically held influence over the Secretariat's counter-terrorism activities as the state who selects the leader of the Department of Political Affairs (DPA). CTITF and UNCCT have been housed within DPA until recently moving to the new Office of Counter-Terrorism, under Russian leadership.

Countering terrorism is at the forefront of the United States' foreign engagements and domestic priorities, from its 15 year war in Afghanistan to its coalition against ISIL (Da'esh) in Iraq and Syria to its national countering violent extremism programs.¹⁴⁷ Yet, the United States under the new Trump administration, has publicly stated that it is reevaluating its involvement in the United Nations, particularly concerning its funding and its participation in the UN Human Rights Council.

In addition, the new Trump administration has demonstrated that it is willing to step up its cooperation with Russia concerning counter-terrorism. This was underlined when President Trump met with Russian Foreign Minister Sergei Lavrov and Russian Ambassador Sergey Kislyak in the spring of 2017 and shared code-worded classified information concerning the Islamic State's plans to perpetrate attacks on aircrafts using personal electronic devices such as laptops. When Russia was able to select candidates for the position of USG to head the new OCT, the

¹⁴⁷. For more detailed information regarding the major legal battles that the United States' "war on Terror" presented please refer to Owen Fiss, *A War Like No Other : The Constitution in a Time of Terror*, The New Press, 2015

United States did not stand in the way. US Ambassador Haley declared on Fox News that “I don’t want to see them get it. That’s not something we would cheer for, but I wouldn’t be surprised if they got it.”¹⁴⁸

Similarly, the new US administration has also signaled greater cooperation with Saudi Arabia, the creator and leader of the UNCCT. The United States jointly opened the new “Terrorist Financing Targeting Center”¹⁴⁹ and helped inaugurate Saudi Arabia’s new “Global Center for Combating Extremist Ideology” along with Egyptian President Sisi, whose country is the chair of the CTC. Saudi Arabia is a counter-terrorism partner of the US, underscored with record arms sales to the Kingdom, the most recent deal totaling \$110 billion.¹⁵⁰ Similarly, President Trump stated that he is “very much behind” President Sisi and spoke with him after his inauguration to discuss countering terrorism.¹⁵¹ Both countries were also not listed on President Trump’s initial Muslim travel ban, despite many foreign terrorist fighters travel from each country to join ISIL (Da’esh). Furthermore, both states have not implemented counter-terrorism measures in accordance with international law, and have continuously violated the fundamental freedoms of their citizens.

The United States despite touting that human rights must be respected in counter-terrorism responses, has historically not led by example. The new Trump administration in fact has called for the re-use of torture as an “effective means” of interrogation of those suspected suspects. Freedom from torture and degrading treatment is a non-derogable right enshrined in Article 7 of the International Covenant on Civil and Political Rights. Yet, since it marked the he “War on Terror,” the United States has violated fundamental freedoms and human rights in the name of countering terrorism including: infringing on Americans’ right to privacy with invasive digital surveillance, use of waterboarding, incommunicado detention at C.I.A. black sites, arbitrary detention for detainees at Guantanamo prison, torture committed against Iraqi detainees at Abu Ghraib, the closing of Muslim charitable organizations in the name of countering terrorist financing, extra-judicial killings by drone-warfare.¹⁵²

The United States cannot be expected to be a partner and leader in developing human rights compliant counter-terrorism measures or partnering only with states who conduct counter-terrorism measures that promote and protect human rights. The United States seceding control

148. Ben Evansky “Russian ambassador in line for UN anti-terror post” <http://www.foxnews.com/world/2017/06/09/russian-ambassador-in-line-for-un-anti-terror-post.html>

149. U.S. and Saudi Arabia to Co-Chair New Terrorist Financing Targeting Center <https://www.treasury.gov/press-center/press-releases/Pages/sm0092.aspx>

150. “US-Saudi Arabia seal weapons deal worth nearly \$110 billion immediately, \$350 billion over 10 years” <http://www.cnbc.com/2017/05/20/us-saudi-arabia-seal-weapons-deal-worth-nearly-110-billion-as-trump-begins-visit.html>

151. “Donald Trump says he is ‘very much behind’ authoritarian Egyptian President Sisi” <http://www.independent.co.uk/news/world/americas/us-politics/donald-trump-sisi-support-egypt-us-president-backs-egyptian-leader-a7664951.html> In addition to “Trump invites Egypt’s Sisi to White House” <http://www.aljazeera.com/news/2017/03/trump-invites-egypt-sisi-white-house-170320074110443.html>

152. For more information please refer to FIDH member organization, Centre for Constitutional Rights for their cases that target the US’s practices of torture and surveillance, particularly their extensive work on Guantanamo. Available here: <https://ccrjustice.org/home/what-we-do/issues/torture-war-crimes-militarism> and <https://ccrjustice.org/home/what-we-do/issues/government-surveillance> and <https://ccrjustice.org/home/what-we-do/issues/guantanamo>.

of counter-terrorism efforts to the new OCT under Russian leadership in addition to Saudi Arabia's influence at a time where it renegotiates its own involvement in the United Nations, is an obvious and most preoccupying sign that human rights may not be a priority of counter-terrorism measures at the UN.

7: NEW GUIDING UN COUNTER-TERRORISM POLICIES

1. SECRETARY GENERAL'S PLAN OF ACTION TO PREVENT VIOLENT EXTREMISM (PVE)

Former Secretary General Ban Ki Moon once stated that "Violent extremism is the scourge of our times,"¹⁵³ a concept that remains legally undefined, but a sentiment that highlights how the PVE agenda might supersede the counter-terrorism strategies of some states who currently criminalize extremism as a separate offense. On the 15th of January 2016, the Secretary General released his Plan of Action to Prevent Violent Extremism (PVE). The plan falls on the coattails of an emerging discourse that has expanded from terrorism to understanding what conditions are "conducive" to terrorist acts and threats referred to as "violent extremism." Preventing "Violent Extremism" was first mentioned by the Security Council in resolution 2129 (2013) where it tasked CTED to engage with new actors in civil society and academia in order to conduct research and information-gathering focused on prevention.¹⁵⁴ In this resolution, terrorism and violent extremism are not given a relational definition, but in other cases such as resolution 2178 (2014)¹⁵⁵ it is noted that violent extremism is "conducive" to terrorism. The latter was the first resolution adopted under Ch. VII that focused on engaging with local actors and NGOs to counter "violent extremist narrative[s]" that can incite terrorist acts.¹⁵⁶

However, there was no state consensus for adopting the Secretary General's Plan of Action at the General Assembly. In June 2016, Russia, Egypt, Pakistan, and other members of the Organisation

153. Letter dated 22 December 2015 from the Secretary-General to the President of the General Assembly A/70/675

154. 19. Recognizes the advantages of a comprehensive approach to preventing the spread of terrorism and violent extremism, consistent with resolutions 1373 (2001) and 1624 (2005), and in this regard, invites CTED, as appropriate and in consultation with relevant Member States, to further engage and enhance its partnerships with international, regional and subregional organizations, civil society, academia and other entities in conducting research and information-gathering, and identifying good practices, and in that context to support the CTC's efforts to promote the implementation of resolutions 1373 (2001) and 1624 (2005), and underscores the importance of engaging with development entities; S/Res/2129

155. Expressed in the introductory paragraph that focuses on the terrorist threats posed by foreign terrorist fighters before being further elaborated on in paragraphs 15 - 19 in the resolution. "Recognizing that addressing the threat posed by foreign terrorist fighters requires comprehensively addressing underlying factors, including by preventing radicalization to terrorism, stemming recruitment, inhibiting foreign terrorist fighter travel, disrupting financial support to foreign terrorist fighters, countering violent extremism, which can be conducive to terrorism, countering incitement to terrorist acts motivated by extremism or intolerance, promoting political and religious tolerance, economic development and social cohesion and inclusiveness, ending and resolving armed conflicts, and facilitating reintegration and rehabilitation," Page 2, S/Res/2178

156. Paragraph 15-19, S/RES/2178

of Islamic Cooperation (OIC) blocked a proposal by the US and allies to endorse the Secretary General's Plan of Action . During the negotiations, states called for the plan of action to consider differing state views, particularly on the notion of extremism driven by colonization and foreign occupation and note that states should only have to "consider" implementing national action plans to prevent violent extremism as opposed to being "called upon." The outcome was a resolution that "welcomes the initiative by the Secretary-General, and takes note of his Plan of Action to Prevent Violent Extremism" instead of endorsement.

2. INTERNATIONAL FRAMEWORK TO COUNTER-TERRORIST NARRATIVES AND IDEOLOGIES

Ahead of the Global Counter-Terrorism Strategy review in 2016, the Security Council, after hosting an Open Debate on Threats to International Peace and Security caused by Terrorist Acts on 29 May 2015, released a Presidential Statement asking the CTC to develop a new "comprehensive international framework" to counter terrorist "narratives" and "ideologies." Specifically, the UNSC called upon the CTC to develop recommended "guidelines and good practices to effectively counter, in compliance with international law, the ways that ISIL (Da'esh) Al-Qaida and associated individuals, groups, undertakings and entities use their narratives to encourage motivate, and recruit others to commit terrorist acts."¹⁵⁷ In addition it was requested to develop a counter narrative campaign, options for coordinating resources, with an emphasis on the primary role of Member States, and "establish partnerships with private sector, civil society, religious, educational and cultural institutions to counter the narratives of terrorist groups."¹⁵⁸ Since, then, the CTC and CTED have held a conference leading up to the release of these guidelines and recommendations focused on Information and Communication Technology (ICT) and Counter-Narratives. However, it is important to note that the effectiveness of this debate concerning counter-narratives and preventing violent extremism, is questionable as the parameters for discussing what constitutes a "narrative" that is "conducive to terrorism" have not been identified and focused. Ultimately, shaping this conversation to ensure that the notion of violent extremism does not become another vehicle for human rights violations in the name of preventative action will be a key priority for human rights defenders to monitor and mobilize around.

3. FIFTH REVIEW OF THE GLOBAL COUNTER-TERRORISM STRATEGY (2016)

On July 1 2016, the General Assembly reviewed the United Nations Global Counter-Terrorism Strategy for the fifth time. This review took into account new priorities such as the Secretary General's Plan of Action to Prevent Violent Extremism and the Open Debate on Countering

157. S/PRST/2016/6

158. S/PRST/2016/6

Terrorist Narratives that had taken place a month before the adopted review.¹⁵⁹ The discussions surrounding the fifth review of the GCTS represented a greater shift from a traditional view of terrorism to the general acceptance of a countering violent extremism view. However, so far, no member state in the adoption of the Global Counter-Terrorism Strategy has called for a definition of “violent extremism.”

The fifth review legitimized these new priorities of “preventing violent extremism” and “countering narratives” by recognizing the “importance of preventing violent extremism as conducive to terrorism,” and by calling on the international community to develop “an accurate understanding of how terrorists motivate others to commit terrorist acts or recruit them, and develop the most effective means to counter terrorist propaganda.”¹⁶⁰ The 2016 review additionally noted that “terrorists may craft distorted narratives that are based on the misinterpretation and misrepresentation of religion to justify violence,” however what constitutes terrorist propaganda and a “narrative” has yet to be defined or explained. Other thematic issues the strategy focused on were the impact of organized crime, use of children in conflict, role of victims of terrorism, importance of education, contribution of women, contribution of youth, and importance of effective criminal justice systems.¹⁶¹

The three most striking sections of the strategy’s review were focused on the role of the UNGA in the UN’s efforts to counter terrorism, the importance of criminal justice systems, and the inclusion of language on “ending foreign occupation.” The review stated that it is “Convinced that the General Assembly is the competent organ, with universal membership, to address the issue of international terrorism.”¹⁶² This sentiment was echoed within the General Assembly’s Sixth Committee Working Group that has been negotiating and drafting a comprehensive counter-terrorism convention,¹⁶³ with some delegations considering that the General Assembly had an important role to play in “standard setting.”¹⁶⁴ However, the Security Council has the primary responsibility for international peace and security and has set counter-terrorism standards under Ch. VII of the Charter. This tension between the General Assembly and the Security Council perpetuates the continuous silo of counter terrorism work within the UN.

159. Security Council Presidential Statement Seeks Counter-Terrorism Committee Proposal for ‘International Framework’ to Curb Incitement, Recruitment

160. Fifth Review, Global Counter Terrorism Strategy, A/70/L.55

161. Fifth Review, Global Counter Terrorism Strategy, A/70/L.55

162. Paragraph 10, Fifth Review, Global Counter Terrorism Strategy, A/70/L.55

163. Legal Committee Urges Conclusion of Draft Comprehensive Convention on International Terrorism

164. Sixty-ninth session: Measures to eliminate international terrorism (Agenda item 107)

Secondly, the review stated that,

“a national criminal justice system based on respect for human rights and the rule of law, due process and fair trial guarantees, is one of the best means for effectively countering terrorism and ensuring accountability.”

This statement reflects where CTITF/UNCCT have focused their capacity building efforts. However, in the area of rule of law capacity building the UN risks duplicating efforts as further detailed. UNODC is the sole body tasked in the GCTS to assist member states in developing effective criminal justice systems in order to prosecute terrorist acts in compliance with human rights law.¹⁶⁵

During the, 2016 review of the Global Counter Terrorism Strategy, FIDH was informed on the negotiations that took place between the Organisation of Islamic Cooperation and Israel. The OIC as led by Saudi Arabia, Pakistan, and Egypt, wanted to proposed the language of “end foreign occupation,” a point of contention in the drafting of a universal definition of terrorism, which is located in the following paragraph of the strategy:

*Reaffirming the determination of Member States to continue to do all they can to resolve conflict, **end foreign occupation**, confront oppression, eradicate poverty, promote sustained economic growth, sustainable development, global prosperity, good governance, human rights for all and the rule of law, improve intercultural understanding and ensure respect for all religions, religious values, beliefs and cultures,*¹⁶⁶

Israel was opposed to including the language, but ultimately let the language stay. After the review was adopted, it was announced that Israel would hold the chairmanship of the Sixth Committee at the seventy-first UNGA, which is responsible for legal questions of the General Assembly and oversight of the Ad Hoc Committee that is locked in negotiations concerning the draft convention on terrorism.

Furthermore, member states were unable to come to a consensus on the best way to improve the UN architecture in order to better implement the strategy. Thus, the fifth review tasked the incoming Secretary General, in consultation with the member states, to review the capability of the UN system to implement the GCTS in a balanced manner and develop a concrete proposal before May 2017. This process which began in February 2017 resulted in the creation of the Office of Counter-Terrorism to be headed by an Under-Secretary General, as previously detailed. Finally,

¹⁶⁵. Annex, Pillar IV, Paragraphs 4. A/RES/60/288

¹⁶⁶. A/RES/70/291

the strategy requested the Secretary General to submit for the UNGA seventy-second session (before April 2018) a report on the progress made in implementing this strategy. However, it is likely that the report on the progress will be conducted by the CTITF/UNCCT staff of the new OCT and thus the report might not be an independent evaluation.

The background is a solid dark purple. It features an abstract geometric pattern of thin, light purple lines that intersect to form various shapes. Three prominent circular elements are visible: one in the top left, one in the top right, and one in the bottom center. Each of these circles is composed of a solid dark purple inner disk and several concentric, lighter purple rings. The lines radiate from these circular nodes across the page.

CHAPTER 2

HUMAN RIGHTS AND UN
COUNTER-TERRORISM

In the UN's counter-terrorism efforts, member states and UN entities have developed a variety of programs and taken action through binding and non binding resolutions to counter and prevent terrorist acts focusing on thematic issues such as facilitating international judicial cooperation, monitoring NGO financing, denying safe havens for terrorist actors, developing effective criminal justice systems, and creating PVE National Action Plans, among others.

Measures taken at the national level are guided by resolutions adopted by the UN Security Council under Ch. VII such as resolutions 1373 (2001), 1624 (2005), 2178 (2015), and more. These resolutions, along with the UN Global Counter-Terrorism Strategy, have also guided the creation of the UN counter-terrorism architecture and the activities conducted by entities,

Protecting and promoting human rights in the fight against terrorism is the only way to conduct counter-terrorism operations in accordance with international law and it is certainly the most effective. The promotion and protection of human rights is essential to effectively addressing the root causes of terrorism and preventing future recruitment of terrorist actors. Despite states pointing to poisonous "ideology," rampant "terrorist narratives" spread on the Internet, or religion, it is state's violations of human rights, notably economic and social rights, that are the largest drivers of terrorist recruitment and terrorist violence. This has been underlined in many research studies, reports by civil society organizations, and even government bodies such as the US State Department who underlined that "state-sponsored violence correlates highly with the emergence of violent extremist organizations."¹⁶⁷ Furthermore, the Special Rapporteur on Counter-Terrorism and Human Rights stated:

Repressive policies and practices that violate human rights and the rule of law can heighten the lure of violent extremism, while other grievances - particularly a lack of economic, social and cultural rights - also provide opportunities for violent extremists.¹⁶⁸

Thus, if the UN is to actually counter and prevent terrorist acts, it should deploy a human rights approach to every activity it conducts, or risk doing more harm than good. As a convening body, norm setter, and the principal body to uphold international peace and security, the UN has a responsibility to counter terrorist violence, but also ensure that it does not harmonize non-human rights compliant practices across the globe.

The UN enshrined the protection of human rights in counter-terrorism efforts in Pillar IV of the adopted Global Counter-Terrorism Strategy. Pillar IV institutionalized that human rights and

167. David Robinson the previous Assistant Secretary, Bureau of Conflict and Stabilization Operations at the US State Department spoke to the United Nations about drivers to violent extremism and terrorism. <https://2009-2017.state.gov/j/cso/releases/remarks/2016/255681.htm>

168. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/31/65

counter-terrorism were complementary and mutually reinforcing goals and that all counter-terrorism entities were responsible for protecting and promoting human rights in their work.

In practice, human rights in the context of the UN's counter-terrorism work is:

- minimized to a generic line in a resolution
- reduced to a few questions on a country visit survey
- comprised of a small staff sprinkled throughout the secretariat and security council bodies
- securitized in the Preventing Violent Extremism agenda
- underfunded in its programming.

Human rights actors within the UN Counter-Terrorism complex are scattered throughout a variety of mechanisms with overlapping mandates, but the responsibility to conduct human rights programs and provide oversight is principally shouldered by the Office of the High Commissioner for Human Rights, which does not have sufficient resources and support. The UN's work to support victims of terrorism is not sufficient and does not recognize all victims of terrorism, including those violated in the context of countering terrorism. To date, the UN has not conducted a human rights evaluation of its counter-terrorism activities and has yet to fully realize their commitment to human rights.

For a comprehensive analysis of the compatibility between counter-terrorism and human rights law and the key to achieving compliance please refer to FIDH's report "Counter-Terrorism Measures and Human Rights: Keys for Compatibility."¹⁶⁹ The 2005 report analyses the legal categories that are especially threatened by the various counter-terrorist measures as well as the precise instances where a specific exception to or limitation of each of these rights may be allowed or prohibited.

169. FIDH: Counter-Terrorism Measures and Human Rights: Keys for Compatibility - October 2005 report available: <https://www.fidh.org/en/issues/terrorism-surveillance-and-human-rights/Counter-Terrorism-Measures-and>

1: HUMAN RIGHTS ENTITIES AND THE UN COUNTER-TERRORISM COMPLEX

1. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR)

The Office of the High Commissioner for Human Rights (OHCHR) plays a variety of coordinating roles in promoting and protecting human rights and fundamental freedoms while countering terrorism. OHCHR promotes human rights as the basis of counter-terrorism policies through “technical assistance and capacity-building initiatives, as well as monitoring, advocacy for and reporting on human rights-compliance in the counterterrorism context.”¹⁷⁰ In this vein, OHCHR conducts human rights compliance monitoring through its field offices, that are reflected in country reports and in the reports of mechanisms such as of the Independent International Commission of Inquiry on Syria. Additionally, in the space of delivering technical assistance and capacity-building, OHCHR was tasked in Human Rights Council (HRC) resolution 30/15 to address the evolving landscape of countering-terrorism with the introduction of the PVE Plan of Action, by working with member states to compile a report of best practices and lessons learned on how to protecting human rights contributes to preventing violent extremism.¹⁷¹

The OHCHR supports human rights mechanisms such as human rights treaty bodies and special procedures such as the Special Rapporteur on Countering Terrorism and Human Rights.

OHCHR is the leader in fulfilling Pillar IV of the Global Counter-Terrorism Strategy focused on “Measures to ensure the protection of human rights and the rule of law while combating terrorism.” OHCHR is responsible for most of the 20 programs completed under Pillar IV. However the amount of projects they have conducted pales in comparison to other Pillars: Pillar I - 110 projects, Pillar II-57, Pillar III-108 projects.¹⁷² It shows that in order to uphold Pillar IV, OHCHR’s budget must be supported in this area.

OHCHR interacts with Security Council bodies by liaising with the Counter-Terrorism Committee

170. “OHCHR, “Protecting human rights while countering terrorism” <http://www.ohchr.org/EN/Issues/RuleOfLaw/Pages/Terrorism.aspx...>”

171. During the 30th session, the HRC adopted a resolution on “Human Rights and Preventing and Counterin Violent Extremism” that tasked OHCHR to compile a report on the “best practices and lessons learned on how protecting and promoting human rights contribute to preventing and countering violent extremism by the thirty-third session.” The compile report with input from states, UN agencies, and NGOs is available (A/HRC/33/29). OHCHR also compiled a summary report of the discussion of the HRC panel on human rights and preventing and countering extremism at the thirty-first session (A/HRC/33/28).

172. A/70/826

and its Executive Directorate (CTED). OHCHR works with all other CTITF entities by participating in 9 of the 12 CTITF Working Groups, co-chairing the Working Group on “Promoting and Protecting Human Rights and the Rule of Law While Countering Terrorism.”

The High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, and his Office, have played a significant role in raising the alarm at human rights violations committed in the context of countering terrorism and preventing and countering violent extremism in a variety of mediums from his thematic reports, addresses to the HRC, and speeches and lectures in various fora. In his thematic reports to the HRC in the context of human rights compliance and countering terrorism, the High Commissioner has focused on: accountability and reparations, due process and targeted sanctions, economic, social and cultural rights in the context of countering terrorism, foreign fighters, international cooperation in countering terrorism, national counter-terrorism legislative measures, preventing and countering violent extremism, right to a fair trial, right to privacy, victims of terrorism, and the prohibition of torture, cruel, inhuman and degrading treatment or punishment. One of the most significant reports of the High Commissioner was its report on the “Negative effects of terrorism on the enjoyment of all human rights and fundamental freedoms,” tasked to complete before the thirty-fourth session of the HRC. This report received contributions from only 17 member states, 8 national institutions, 2 international

organizations, and 15 NGOs. The only states to submit contributions were Brazil, Burundi, Egypt, Lebanon, Libya, Madagascar, Mauritius, Mexico, Panama, Peru, Portugal, Qatar, Russian Federation, Switzerland, Syrian Arab Republic, Togo, and the United States of America.



Press conference of the High Commissioner for Human Rights 16 October 2014
UN Photo / Jean-Marc Ferré

The High Commissioner has made the issue of protecting and promoting human rights in countering-terrorism a core priority stating that “Measures which ensure respect for human rights will extinguish violent extremism more effectively, and more sustainably, than any crackdown. Justice and human rights are the essential foundation of loyalty. They are what is needed.”¹⁷³ On

173. Statement of the UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, at the 31st session of the Human Rights Council in Geneva, 29

February 2016: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17102>

September 11st, 2017, in his address to the HRC, he directly called on states to state that,

*the actions of violent extremists cannot totally obliterate our world. Only governments can do that – and this is the greater tragedy of today. Left on their current course, it will be governments who will break humanity. Terrorists may attack us, but the intellectual authors of those crimes will then often sit back and watch as governments peel away at human rights protections; watch, as our societies gradually unravel, with many setting course toward authoritarianism and oppression – staging for us, not a century of achievement and pride, but a century that is small, bitter and deprived, for the vast majority of humans.*¹⁷⁴

The High Commissioner went on to detail the human rights situation in forty countries and the proliferation of abuses committed in the context of countering-terrorism and extremism.

1.1 OHCHR, CTC AND CTED

According to the information available regarding the CTC's human rights approach, CTED is responsible to liaise with the Office of the High Commissioner for Human Rights and, as appropriate, with other human rights organizations in matters related to counter-terrorism.¹⁷⁵ On October 09, 2005 and October 24, 2013 the CTC was briefed by the UN High Commissioner for Human Rights Navi Pillay. However, there is no public information available about any briefings of the CTC by the current UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein. On June 11, the ASG for Human Rights, Andrew Gilmour, briefed CTED concerning human rights compliant international counter-terrorism judicial cooperation, he highlighted that, "baseline for successful international law enforcement cooperation must be counter-terrorism laws and measures that are consistent with human rights standards and compliant with the principle of legality."¹⁷⁶ The ASG's participation in CTED special meetings is encouraging and FIDH hopes for more involvement in CTED events and meetings.

1.2 OHCHR AND 1267 MONITORING TEAM

The Monitoring Team is not individually tasked to engage with human rights mechanisms and bodies apart from its engagement with OHCHR in their participation in the CTITF Working Group on the Protection of Critical Infrastructure including Vulnerable Targets, Internet and Tourism

174. Septemebr 11, 2017: "Darker and more dangerous: High Commissioner updates the Human Rights Council on human rights issues in 40 countries" Human Rights Council 36th session- Opening Statement by Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041&LangID=E>

175. Page 2, S/AC.40/2006/

176. Special meeting of the Counter-Terrorism Committee with international, regional and subregional organizations on "International Judicial and Law Enforcement Cooperation in Counter-Terrorism Matters pursuant to Security Council resolution 2322 (2016) and Other Relevant Council Resolutions: Statement by Andrew Gilmour, Assistant Secretary-General for Human Rights, 21 June 2017, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21789&LangID=E>

Security, and in the Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism.¹⁷⁷ The Monitoring Team has been criticized for their lack of transparency regarding de-listing procedures on the Consolidated List which resulted in the creation of the Office of the Ombudsperson and the Focal Point for De-listing.

1.3 OHCHR & UNODC

The Global Counter Terrorism Strategy notes that effective criminal justice systems are one of the best ways to counter-terrorism, it must be noted that Pillar IV calls on states to seek technical support specifically from UNODC in establishing effective criminal justice systems to prosecute those who perpetrate acts of terror or support terrorist acts. However, because OHCHR is not tasked in addition to UNODC, it puts a human rights based approach to criminal justice efforts at risk.

1.4 OHCHR AND CTITF WORKING GROUPS

Within the coordinating structure of CTITF, which brings together 38 entities, OHCHR has an opportunity to mainstream human rights into UN counter-terrorism efforts through its participation in nine of the twelve working groups.

OHCHR chairs the CTITF "Working Group on Protecting Human Rights while Countering Terrorism."¹⁷⁸ The working group has created various Basic Human Rights Reference Guides reference for states such as:

- Reference guide on the stopping and searching of persons, March 2014,
- Reference guide on security infrastructure, March 2014
- Reference guide on detention in the context of counter-terrorism, October 2014
- Reference guide on the conformity of national counter-terrorism legislation with international human rights law, October 2014
- Reference guide on the right to a fair trial and due process in the context of countering terrorism, October 2014.

However, it is unclear how these reference guides' recommendations are practically used by states and by the UN in technical assistance.

In the reference guide on conforming counter-terrorism legislation with international human rights law, the working group calls for independent mechanisms to be established within each

177. 1267 Monitoring Team Description document, <http://www.un.org/en/sc/ctc/specialmeetings/2011/docs/1267-description.pdf>

178. <http://www.ohchr.org/EN/newyork/Documents/Counter-terrorismLegislation.pdf>

member state. Specifically, the working group calls upon states to “establish independent mechanisms for the regular review of the operation of national counter-terrorism law and practice.” However, there does not exist an independent mechanism to operate within the United Nations that would have the power to publicly identify gaps in the counter-terrorism framework and states actions.

The two working groups that OHCHR is neither a chair nor an entity of are the working group “Countering the Financing of Terrorism” and “Preventing and Responding to WMD Terrorist Attacks.”¹⁷⁹ However, despite the regular policy and advocacy work provided by OHCHR throughout CTITF and its participation entity in nine other groups covering many critical themes from PVE to foreign terrorist fighters to legal and criminal justice responses to terrorism.¹⁸⁰ Its capacity is strained by a lack of adequate amount of staff tasked to deal with human rights and counter-terrorism in New York.

2. SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE COUNTERING TERRORISM

The Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism was initially created for a period of three years by the Commission on Human Rights in Resolution 2005/80, adopted in April 2005.¹⁸¹ This mandated was then extended on June 30, 2006 by the human rights council for one additional year.

The Special Rapporteur was preceded by the Independent Expert on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism.¹⁸² Robert Goldman, was appointed the Independent Expert by resolution 2004/87, for a period of one year, in order to complete a report with the High Commissioner to identify key issues affecting the protection of human rights in the fight against terrorism and how to strengthen the United Nations human rights mechanisms while countering terrorism. Goldman concluded that the Commission should consider creating a special procedure to monitor states’ counter-terrorism measures and their compatibility with human rights law.¹⁸³

179. <https://www.un.org/counter-terrorism/ctitf/en/working-groups>

180. Border Management and Law Enforcement relating to Counter-Terrorism, Conditions Conducive to the Spread of Terrorism, Foreign Terrorist Fighters, National and Regional Counter-Terrorism Strategies, Preventing Violent Extremism, Promoting and Protecting Human Rights and the Rule of Law While Countering Terrorism, Protection of Critical Infrastructure Including Internet, Vulnerable Targets and Tourism Security, Supporting and Highlighting Victims of Terrorism, Legal and Criminal Justice Responses to Terrorism

181. Human Rights Resolution 2005/80

182. Report of Robert K. Goldman, independent expert on the protection of human rights and fundamental freedoms while countering terrorism

183. Paragraph 92: 91. It is important to acknowledge that significant steps have been taken by the United Nations human rights system to address the protection and promotion of human rights in the struggle against terrorism. Nevertheless, the independent expert considers that, given the gaps in coverage of the monitoring systems of the special procedures and treaty bodies and the pressing need to strengthen human rights protections while countering terrorism, the Commission on Human Rights should consider the creation of a special procedure with a multidimensional mandate to monitor States’ counter-terrorism measures and their compatibility with international human rights law. In order to be an effective monitoring mechanism, such a special procedure should have the following attributes: its mandate should encompass all internationally recognized human rights and extend to all States; it should be authorized to provide technical assistance

The first Special Rapporteur appointed was Mr. Martin Scheinin of Finland who served from August 1, 2005 to July 31 2011. He was succeeded by Mr. Ben Emmerson of the United Kingdom who served from August 1st 2011 to July 31st 2017. The current Special Rapporteur is Fionnuala Ní Aoláin who began her term on August 1st 2017, the first woman to hold the post.

The Special Rapporteur's initial mandate was to make concrete recommendations on the promotion and protection of human rights while countering terrorism, provide technical assistance at the request of states, gather, request, receive, and exchange information regarding alleged human rights violations while countering terrorism, promote best practices, work closely with other human rights actors (special rapporteurs, special representatives, independent experts), and develop regular dialogue with UN counter terrorism bodies on issues.¹⁸⁴ The main bodies that the Special Rapporteur was to liaise with were the CTC, OHCHR, and UNODC-TPB. However, in subsequent HRC resolutions such as 15/15 and 22/8, the Special Rapporteur was tasked to also integrate a gender perspective, report regularly to the General Assembly, and engage with non-governmental organizations, regional, and subregional institutions.¹⁸⁵ The UN Special Rapporteur additionally conducts country visits upon invitation. In April 2017, the Special Rapporteur conducted an official country visit to Saudi Arabia. In the past, the Special Rapporteur has visited Burkina Faso, Chile, Tunisia, Peru, Egypt, Spain, South Africa, United States of America, Israel & OPT, Australia, and Turkey.

Programmatically, the UN Special Rapporteur also engages with CTITF entities through their participation in six working groups.¹⁸⁶

Under their leadership and expertise, the Special Rapporteurs have covered a great many areas that challenge how member states engage in the fight against terrorism. The issues the Special Rapporteur has raised have pertained to victims of terrorism, suicide attacks as a form of terrorism,

to Governments in the design of counter-terrorism measures; it should be authorized to receive credible information from governmental, intergovernmental and non-governmental sources and to dialogue with Governments; it should report directly to the Commission on Human Rights; it should be operational and authorized to undertake several in situ visits per year; it should be authorized and encouraged to consult with and exchange information with the Security Council's Counter-Terrorism Committee; it should exchange information and engage in cooperative activities with the Office of the High Commissioner, other relevant mandate holders and treaty bodies; and it should consult with regional and subregional intergovernmental and human rights bodies. In addition, the mandate holder should have demonstrable expertise in human rights law, as well as solid knowledge of international humanitarian law, criminal law and refugee law. Report of Robert K. Goldman, independent expert on the protection of human rights and fundamental freedoms while countering terrorism

184. a) To make concrete recommendations on the promotion and protection of human rights and fundamental freedoms while countering terrorism, including, at the request of States, for the provision of advisory services or technical assistance on such matters;

(b) To gather, request, receive and exchange information and communications from and with all relevant sources, including Governments, the individuals concerned, their families, their representatives and their organizations, including through country visits, with the consent of the State concerned, on alleged violations of human rights and fundamental freedoms while countering terrorism, with special attention to areas not covered by existing mandate holders;

(c) To identify, exchange and promote best practices on measures to counter terrorism that respect human rights and fundamental freedoms; (d) To work in close coordination with other special rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights, the Sub-Commission on the Promotion and Protection of Human Rights and other page 5 relevant United Nations bodies;

(e) To develop a regular dialogue and discuss possible areas of cooperation with all relevant actors, including Governments, relevant United Nations bodies, specialized agencies and programs, in particular with the Counter-Terrorism Committee of the Security Council, the Office of the United Nations High Commissioner for Human Rights, the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime, human rights mandate Article 13, Human Rights Resolution 2005/80

185. A/HRC/RES/15/15

186. Participates in the following working groups of CTITF: Foreign Terrorist Fighters, National and Regional Counter-Terrorism Strategies, Preventing Violent Extremism, Promoting and Protecting Human Rights and the Rule of Law While Countering Terrorism, and Highlighting Victims of Terrorism, Legal and Criminal Justice Responses to Terrorism

secret detention, refugee protection while countering terrorism, “profiling,” privacy, prevention of terrorism, issues of non-state actors, intelligence agency oversight, gender perspectives in countering terrorism, freedom of association and peaceful assembly, fair trial guarantees, economic, social and cultural rights, defining terrorism, conditions conducive to terrorism, and human rights compliance by the United Nations.

As the focus of countering terrorism has shifted to addressing conditions conducive to terrorism, specifically addressing Preventing Violent Extremism, the Special Rapporteur has led critical efforts to address the danger of ambiguities in developing violent extremism policies, like creating national PVE action plans that will be covered later in this report.

2. ADDITIONAL HUMAN RIGHTS OVERSIGHT IN UN COUNTER-TERRORISM ARCHITECTURE

1. COUNTER-TERRORISM COMMITTEE (CTC) AND COUNTER-TERRORISM EXECUTIVE DIRECTORATE (CTED)

Resolution 1373 (2001), which established the CTC, made no reference to respecting human rights in the design and implementation of counter-terrorism measures, except in the context of granting of refugee status.¹⁸⁷ The resolution failed to address human rights issues in the policies and measures it was monitoring, an omission that may to some extent have been deliberate. This was remedied with the adoption of Resolution 1456 (2003) that stated all measures taken to counter-terrorism must comply with international law, including international human rights, refugee and humanitarian law.¹⁸⁸

The former Special Rapporteur Martin Scheinin documented a number of instances where the CTC was insensitive to human rights concerns. He noted that in CTC dialogues with states, it sought information from states on criminal investigation techniques that violate basic human rights such as “controlled delivery,” pseudo-offenses, anonymous informants, cross-border pursuits, the bugging of private and public premises, and the interception of confidential internet and telephone communications. Furthermore, he argued that “States

187. S/RES/1373, paragraph f.

188. S/RES/1456 Paragraph 6.

may get the impression that they are requested to expand the investigative powers of their law enforcement authorities at any cost to human rights.”¹⁸⁹

The CTC’s initial human rights policy was expressed by its first Chairman, Sir Jeremy Greenstock of the United Kingdom, in January 2002, that “monitoring performance against other international conventions, including human rights law, is outside the scope of the Counter-Terrorism Committee’s mandate.”¹⁹⁰ However, under the leadership of Ms. Ellen Margrethe Løj of Denmark from 2005-2006, the CTC detailed its newly proactive approach to addressing human rights concerns. This was supplemented by Resolution 1624 (2005), which distinctively among other counter-terrorism resolutions addressed compliance with human rights obligations in an operative paragraph, rather than the preamble, demonstrating the relevance of human rights concerns at the UNSC.



CTED United Against Terror Meeting 21 June 2017

Since 2001, CTC and CTED have made efforts regarding their work promoting and protecting human rights. The following page includes a non-exhaustive list of human rights work the CTC and CTED have undertaken.

189. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, E/CN.4/2006/98, Paragraph 60

190. <http://www.un.org/en/sc/ctc/rights.html>

- In 2003, the CTC stated that all Member States “must ensure that any measure taken to combat terrorism comply with all their obligations under international law, in particular.”¹⁹¹
- In March 2005, a human rights expert was appointed among the CTED staff.
- In May 2006, the CTC adopted its first-ever Conclusions for Policy Guidance regarding Human Rights and the CTC.
- On 29 October 2009 the CTC was briefed by the UN High Commissioner for Human Rights Navi Pillay
- On 2nd October 2013 CTED launched with UNODC a global initiative on effective counter-terrorism investigations and prosecutions while respecting the rule of law and human rights. The European Union pledged 3 million euros towards this initiative.
- After adopting a Plan of Action to implement Resolution 1624 (2005) the CTC conducted a Global survey of the implementation of Security Council resolution 1624 (2005) by Member States in January 2016. This included an independent discussion on human rights at the conclusion of the survey, but does not go into specific cases or instances where they communicated concerns with States.¹⁹²
- Resolution 1963 (2010) renewed CTED’s mandate for three years and reminded states “that effective counter-terrorism measures and respect for human rights are complementary and mutually reinforcing, and are an essential part of a successful counter-terrorism effort.” Moreover, CTED was formally encouraged to “interact ... with civil society and other relevant non-governmental actors in the context of its efforts.”¹⁹³
- In October 2011 the Special Rapporteur on human rights and counter-terrorism briefed the CTC¹⁹⁴
- Resolution 2129 (2013) renewed CTED’s mandate until December 2017 and reminded states that human rights are complementary and mutually reinforcing.¹⁹⁵
- In October 2013: High Commissioner for Human Rights Navi Pillay briefed the CTC for the second time.¹⁹⁶
- In December 2016, the CTC held a special meeting on “Preventing Terrorists from Exploiting the Internet and Social Media to Recruit Terrorists and Incite Terrorist Acts, While Respecting Human Rights and Fundamental Freedoms” in which OHCHR and the Special Rapporteur on the Promotion and Protection of the Rights to Freedom of Opinion and Expression participated.¹⁹⁷
- In 2017, CTED’s Program of Work for 2017 states that: “The Executive Directorate will submit to the Committee information on the further development of activities in the area of human rights in the context of counter-terrorism and activities to ensure that all human rights and rule of law issues relevant to the implementation of resolutions 1373 (2001), 1624 (2005) and 2178 (2014) and other relevant resolutions are addressed consistently and evenhandedly, including, as appropriate, during country visits organized with the consent of the visited Member State and within the framework of technical assistance delivery.”¹⁹⁸
- On August 21, 2017 CTED submitted new Technical Assistance guides to the Security Council to ensure greater human rights protections.

191. UNSC Meeting on 23 July 2003, Threats to International Peace and Security caused by Terrorist Acts, S/ PV/4792

192. Section 67, S/2016/50

193. S/RES/1963

194. “Effective counter-terrorism policies are based on ‘strict observance of human rights standards,’ says Special Rapporteur Ben Emmerson” <https://www.un.org/sc/ctc/blog/2011/10/20/effective-counter-terrorism-policies-are-based-on-strict-observance-of-human-rights-standards-says-special-rapporteur-ben-emmerson/>

195. Paragraph 21, S/RES/2129 “notes the importance of respect for the rule of law so as to effectively combat terrorism, and encourages CTED to further develop its activities in this area, to ensure that all human rights and rule of law issues relevant to the implementation of resolutions 1373 (2001) and 1624 (2005) are addressed consistently and evenhandedly including, as appropriate, on country visits that are organized with the consent of the visited Member State and in the delivery of technical assistance.”

196. “Terrorism has a ‘very real and direct impact’ on human rights, High Commissioner Navi Pillay tells Committee” <https://www.un.org/sc/ctc/blog/2013/10/24/terrorism-has-a-very-real-and-direct-impact-on-human-rights-high-commissioner-navi-pillay-tells-committee/>

197. Review the Chairs summary of the special meeting here: <https://www.un.org/sc/ctc/blog/document/chairs-summary-special-meeting-of-the-counter-terrorism-committee-with-international-and-regional-organizations-on-preventing-terrorists-from-exploiting-the-internet-and-social-med/>

198. Work program of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism for 2017, S/2017/176

Overall, CTED claims to take a proactive approach to human rights by: liaising with OHCHR, adding another human rights experts to its team,¹⁹⁹ mainstreaming human rights activities, including in the preparation of Preliminary Implementation Assessments (PIAs) and Detailed Implementation Surveys²⁰⁰²⁰¹ with states, country visits and other interactions with Member States. However, the promise that CTED addresses human rights even-handedly into their activities has yet to be made public. The State reports have remained unpublished after 2006. CTED refers to human rights concerns in the Global Implementation Surveys of 1373 (2001) and 1624 (2005) in general terms as a thematic and regional issue without country and situation specific details.

The CTC and CTED are only allowed to conduct evaluations and state visits upon invitation. CTED must observe whether the measures taken by the visited state comply with international human rights, humanitarian and refugee law mainly relying on official information only, as their guiding documents do not explicitly allow them to use alternative sources and get an even more accurate view of the human rights situation; however, relevant UNSC resolutions such as 1624 (2005) and 2178 (2014) are very clear on the importance of engaging with civil society and ensuring that human rights violations do not occur in the counter-terrorism context, which should encourage CTC and CTED to rely more on non-official sources of information in the process of data gathering.

Even though, CTED openly claims to work closely with “civil society,”²⁰² in reality, the organizations it mostly works with range from think tanks to research institutions, academic institutions, special interest bodies such as UNA/USA, and private sector representatives, such as IBM or Microsoft, to consider technical assistance issues.²⁰³ Known civil society actors that CTED has invited to events in New York include, ICT4PEACE, Global Network Initiative, Vox Pol, and Access Now,

199. According to the publicly made information available regarding the CTC's human rights approach, CTED is responsible to Provide advice to the Committee, including for its ongoing dialogue with States on their implementation of resolution 1373 (2001), on international human rights, refugee and humanitarian law, in connection with identification and implementation of effective measures to implement resolution 1373 (2001)

Advise the Committee on how to ensure that any measures States take to implement the provisions of resolution 1624 (2005) comply with their obligations under international law, in particular international human rights law, refugee law, and humanitarian law; and

Liaise with the Office of the High Commissioner for Human Rights and, as appropriate, with other human rights organizations in matters related to counter-terrorism.

200. The Special Rapporteur, Ben Emmerson, stated in his final report that “Human rights questions now comprise approximately 15% of the coverage of the Executive Directorate's main assessment tool, the detailed implementation assessment, which has been confirmed by FIDH. There is a question relating to whether the rule of law is respected in cases of terrorism and whether the definition of terrorism by the state is clear and precise, among others.

201. The Preliminary Implementation Assessments', according to the publicly available presentation made by the CTC in 2007, procedure and preparation is:

- prepared by CTED experts
- reviewed by one of the Sub-committees of the Committee
- approved by the Committee
- sent to Member States with cover letters

Following the preparation of the PIA, the member states are then requested to:

- review the PIA
- provide updates to the Committee on measures taken and on areas where there is insufficient information take measures to address identified shortfalls#

Member state reports are publicly made available through the CTC website of their review from 2001- 2006. However, the CTC has now undertaken new reporting measures with member states concerning the most recent resolutions concerning terrorism. PROCEDURES OF THE SUB-COMMITTEES OF THE COUNTER-TERRORISM COMMITTEE (CTC) REGARDING THE PRELIMINARY IMPLEMENTATION ASSESSMENTS (PIA)

202. CTED 2010 Communications Strategy and Action Plan http://www.un.org/en/sc/ctc/docs/policypapers/communications_strategyplan2010.pdf

203. The Policy also states “CTC and CTED, under direction of the Committee, should incorporate human rights into their communications strategy, as appropriate, noting the importance of States ensuring that in taking counter-terrorism measures they do so consistent with their obligations under international law, in particular human rights law, refugee law and humanitarian law, as reflected in the relevant Security Council resolutions.” <http://www.un.org/en/sc/ctc/rights.html>

among others. Even though, CTED was welcoming to working with FIDH, it is not clear whether there is continuous cooperation with other human rights organizations at headquarters and with local civil society during country visits.

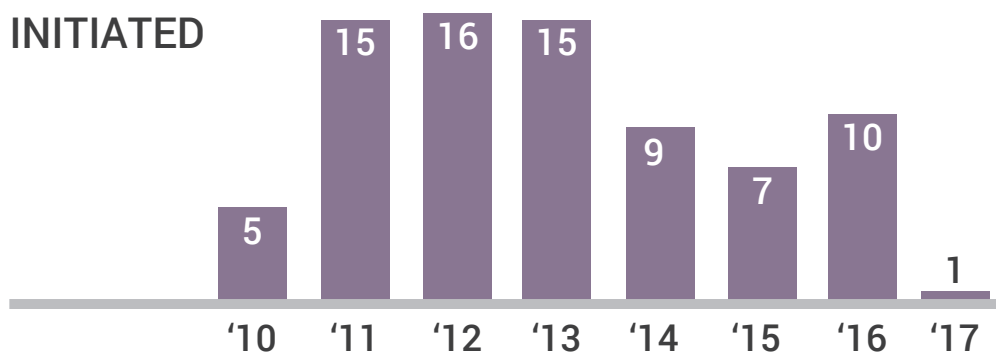
2. THE OFFICE OF THE OMBUDSPERSON TO THE ISIL (DA'ESH) AND AL-QAIDA SANCTIONS COMMITTEE & DUE PROCESS

The Office of the Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee, created by resolution 1904 (2009), is responsible for receiving and analyzing de-listing requests regarding the ISIL (Da'esh) and Al-Qaida affiliates. At the time of writing, the United Nations was recruiting a new Ombudsperson. The previous Ombudsperson was Catherine Marchi-Uhel, who was appointed by the Secretary-General on 13 July 2015, began her official duties 27 July 2015, and left office on 7 August 2017.²⁰⁴

The following statistics are the current rate of de-listing requests to the Office of the Ombudsperson:

NUMBER OF CASES TO DATE	79	NUMBER OF DELISTING REQUESTS GRANTED ¹	55 50 INDIVIDUALS AND 28 ENTITIES
NUMBER OF CASES PENDING AND IN PROGRESS	7	% OF CASES DELISTED	69.62
NUMBER OF CASES CONCLUDED	69	% OF CASES DENIED	18
NUMBER OF CASES OF INDIVIDUALS THROUGH PRESENT	72	% OF CASES OF INDIVIDUALS	91
NUMBER OF CASES OF ENTITIES ¹ THROUGH PRESENT	7	% OF CASES OF ENTITIES	9

RATE OF CASES INITIATED



204. <https://www.un.org/sc/suborg/en/ombudsperson>

The low rate of cases raises concerns of a lack of accessibility to the office, or lack of capacity of the office, or a lack of information on the process.

Despite the reforms of the sanctions regime with the creation of the Ombudsperson, the procedure has been criticized for its lack of transparency by the Special Rapporteur on Counter Terrorism and Human Rights²⁰⁵ as well as civil society. In response, the first Ombudsperson, Kimberley Prost published a document in November 2012 concerning how the office will evaluate information,²⁰⁶ in addition to expressing criticisms regarding her post. She stated that:

*"no other improvements have been made to the transparency of the process and this remains the most significant fair process lacuna in the context of the Ombudsperson mechanism...As a result, the Ombudsperson process remains on which is unnecessarily shrouded in mystery."*²⁰⁷

Previously, petitioners lacked access to information regarding the Ombudsperson's process of evaluation and it can be argued that they still do today. Petitioners are not allowed access to the full decision making on their cases outside of what the Ombudsperson discloses.²⁰⁸ In order to remedy this, the outgoing Ombudsperson supplemented efforts by her predecessor by publishing a document online concerning the Ombudsperson's approach to analysis titled "Approach and Standard."

205. The first Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Schenin, who criticized the lack of transparency of the Ombudsperson and stated that the UNSC acts "beyond its powers, by maintaining under Chapter VII its Consolidated List of Taliban and Al Qaida terrorists, He continued to state that "the procedures for terrorist listing and delisting by the 1267 Committee do not meet international human rights standards concerning due process or fair trial." He noted that the newly separated Taliban sanctions regime was "a retrogressive step in relation to the human rights concerns expressed and the reforms already undertaken within it", in particular because the grounds for delisting are "openly political"...Due to the unsatisfactory level of due process guarantees such as disclosure of information and a right to an effective remedy, the strengthened role of the Ombudsperson is unlikely to satisfy national or European courts that the safeguards at the United Nations level are sufficient, so that these courts could allow deference instead of exercising their jurisdiction over the national or European measures for the implementation of the sanctions""Human rights / Counter terrorism: the new UN listing regimes for the Taliban and Al-Qaida - Statement by the Special Rapporteur on human rights and counter terrorism, Martin Scheinin" Available at <http://newsarchive.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11191&LangID=E>

206. <https://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/20160329openbriefing.pdf>

207. Paragraph 40, 41, Ninth Report of the Ombudsperson to the Security Council

208. The second Ombudsperson Marchi-Uhel has sought to remedy the transparency of the process as she noted in her address to Member States on March 29, 2016 by noting that the only thing she could do is "engage with the Committee and to convince it to disclose to the fullest extent my analysis to the petitioner through reasons letters... [as] real progress has been made in this respect compared with the situation deplored by my predecessor in previous reports. In spite of this progress, such disclosure does not equate access to the full comprehensive report." March 29 Open Briefing, Ombudsperson: <https://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/20160329openbriefing.pdf>

However, there are three additional hurdles that impede the Ombudsperson's work.

1. The Ombudsperson is only able to review information that states are willing to share and does not get to know the source of that information.²⁰⁹ Having accurate information is important for the Ombudsperson to test the credibility or authenticity of a petitioner's evidence.²¹⁰ The Ombudsperson should have access to all information required to make a decision to request for delisting.

2. The Office of the Ombudsperson was intended to act as an independent body, however, to date, "no separate 'Office of the Ombudsperson' has been established" and its current budget is subsumed by the Analytical Support and Sanctions Monitoring team, prohibiting it from operating as a completely independent body. Each Ombudsperson has been recruited as a consultant and their performance is subject to "evaluation with reference to undefined 'conditions' by unidentified officials within the division of the UN" that are actually "the very bodies from which the Ombudsperson must maintain independence."²¹¹ Ultimately, this could result in the Ombudsperson not being paid.

This issue is currently being addressed and the Ombudsperson agreed with the Secretariat's proposal that the Office of the Ombudsperson be established as a stand-alone special political mission with a dedicated budget and act as a United Nations staff member. However, while the Ombudsperson remains hopeful that efforts will be addressed, these shortcomings have yet to be realized after the steps outlined in Resolution 2253 (2015).²¹² However, even in the Ombudsperson's most recent Thirteenth report, none of these arrangements had been addressed yet.²¹³

3. The main impediment to the work of the Office of the Ombudsperson is that the 1267 Committee is ultimately not bound to follow recommendations for delisting.

209. This was highlighted in the most recent Thirteenth report where there was one new arrangement that had been made to access classified or confidential information, with Canada creating Seventeen agreements existed with member states including Australia, Belgium, Costa Rica, Denmark, Finland, France, Germany, Ireland, Liechtenstein, Luxembourg, the Netherlands, New Zealand, Portugal, Switzerland, the United Kingdom of Great Britain and Northern Ireland, and the United State of America. Interestingly, she highlighted that on arrangement with a state was contingent on language stipulating the agreement only applied to the previous Ombudsperson personally. Ibid: March 29 Open Briefing.

210. Paragraph 13, Twelfth Report of the Office of the Ombudsperson.

211. Paragraph 36, Twelfth Report S/2016/671, this language is also reflected in the previous Ombudsperson's report S/2015/533 paragraph 61-62 that states that the "terms of the resulting consultancy contract are fundamentally inconsistent with the independent role and functions of the Ombudsperson that "the Secretary-General must be able to certify that certain conditions of performance have been met if he is expected to authorize monthly payment of fees."

212. Paragraph 59, Resolution 2253

213. Paragraph 36 Thirteenth Report of the Ombudsperson S/2017/60

3. THE FOCAL POINT FOR DE-LISTING

The Focal Point for De-Listing is a Security Council subsidiary organ pursuant to resolution 1730 (2006) and tasked by elements of resolution 2253 (2015) and resolution 2255 (2015). There is a lack of publicly available practical information on the work and activities of the Focal Point. In 2016, the Focal Point received zero de-listing requests²¹⁴ which raises our concerns that the Focal Point is inaccessible and invisible. Those who are on the following lists already have their freedom of movement restricted and thus, the lack of accessibility and information on the Focal Point is all the more problematic from a human rights perspective. Especially, if in some cases individuals listed cannot resort to a national mechanism.

The Focal Point is responsible for receiving de-listing requests of petitioners other than those of the ISIL (Da'esh) and Al-Qaida Sanctions List. States such as France and Hungary have chosen that their citizens must address de-listing requests directly to the Focal Point instead of going through their national focal point.²¹⁵

The Focal Point for De-Listing is responsible for only dealing with names that are inscribed on the following lists, but is still not charged to deal with investigating misidentification.²¹⁶

- 751 (1992) and 1907 (2009) concerning Somalia and Eritrea
- 1518 (2003); 1533 (2004) concerning the Democratic Republic of the Congo
- 1591 (2005) concerning the Sudan;
- 1636 (2005) 1718 (2006); 1970 (2011) concerning Libya
- 1988 (2011); 2048 (2012) concerning Guinea-Bissau
- 2127 (2013) concerning the Central African Republic
- 2140 (2014) & 2206 (2015) concerning South Sudan.

214. Informal report of the Focal Point for De-listing established pursuant to Security Council resolution 1730 (2006), https://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/fp_de-listing_informal_annual_report_for_2016_30_dec_2016.pdf

215. <https://www.un.org/sc/suborg/en/sanctions/delisting>

216. In the Office of the Ombudsperson's Twelfth Report, she noted how the Ombudsperson received a request from an individual whose details were similar to an individual subjected to sanctions on the ISIL (Da'esh) (Da'esh) and Al-Qaida Sanctions Committee. However she points out that "the mandate of the Focal Point under other regimes does not extend to cases of mistaken identification or confusion with an individual listed under another regime. As a result, individuals experiencing such problems as a result of mistaken identification or confusion with individuals listed under another regime have no recourse or depend on their State of nationality of residence to bring the matter to the attention of the relevant committee." While this issue was outside of the Ombudsperson's purview, it was noted because these requests were initially sent to the Ombudsperson and she believed that noting this was important to mention in her report to member states in order to ameliorate this deficiency. This is key as only individuals whose "names are inscribed on the following sanctions lists can submit for de-listing, yet there is no mention of the procedure for individuals whose identities are mistaken for individuals on the sanctions lists," Paragraph 46, Twelfth Report of the Ombudsperson

4. UNITED NATIONS COUNTER-TERRORISM CENTER (UNCCT)

The only human rights programs that the UNCCT engage with are ones that provide research resources for investigations so that member states can have “access to good practices.”²¹⁷ Within Pillar IV, as recently detailed in the annex of the fifth review of the Global Counter-Terrorism Strategy, UNCCT has partnered with CTITF on 4 projects and with OHCHR on 1 project individually. These programs include the Portal on Victims of Terrorism, supporting the CTITF working group on human rights, training programs in MENA on community engagement through human rights led policing, and supporting a conference of the Special Rapporteur.²¹⁸

The UNCCT stated in their five year program, that is not publicly available, that “it remains essential that human rights are integrated into all of the programmatic work of the UNCCT.”²¹⁹ However, it is still not clear how this rights based approach is implemented practically into all UNCCT activities. Perhaps the evaluation that UNCCT will be conducting at the end of 2017 against the goals of its five year strategy will be a good opportunity to show UNCCT’s integration of human rights into all of its work. This evaluation should be made public.

5. VICTIMS OF TERRORISM SUPPORT PORTAL

The Victims of Terrorism Portal was developed after the Secretary-General’s Symposium on Supporting Victims of Terrorism in 2008, following the adoption of the Global Counter-Terrorism Strategy²²⁰ and launched in June 2014.²²¹ The Portal aims to serve as the main resource hub for information related to victims of terrorism and provide victims and their families with information on rehabilitation in addition to “express[ing] international solidarity with victims and raise awareness of national and international efforts undertaken to support them.”²²² As of January 2016, the Portal has had over 121,000 guest users.²²³

217. Outcome 3: Human Rights & Victims (relating to Pillar IV of the Global Strategy)

Drawing on UNCCT expertise/assistance and program support, Member States ensure respect for human rights as the fundamental basis of the fight against terrorism

Output 3.1: Human Rights: Through UNCCT support, requesting Member States have access to good practices on ensuring respect for human rights while countering terrorism and are enabled to apply them

Output 3.2: Victims: Through UNCCT support, requesting Member States have an enhanced capacity to provide support to victims of terrorism, including by strengthening their voices

218. A/70/826

219. UNCCT 5- Year Programme, Pg 28.

220. “Victims are the international community’s strongest and most courageous allies in exposing the hypocrisy of terrorist and violent extremist narratives. The Secretary-General recommends that the voices of victims be strengthened in order to put forward alternative narratives to those violent extremists and that solidarity be shown by engaging in global awareness campaigns, including through the Victims of Terrorism Support Portal. He calls upon more Member States to contribute practical information to the Portal in order to strengthen its capacity to support terrorism.”Pg 25-69, A/70/826

221. Annex Pillar IV projects, #1, , A/70/826 and Victims of Terrorism Portal, About Us

222. Victims of Terrorism Support Portal, About Us

223. Pg 24, A/70/826

3: HUMAN RIGHTS PROVISIONS IN UN RESOLUTIONS AND POLICIES

1. SECURITY COUNCIL COUNTER-TERRORISM RESOLUTIONS

Human rights are not always incorporated into operative paragraphs of counter-terrorism related resolutions adopted by the Security Council. It is typically reduced to a generic line in the preamble regarding all measures taken in the resolution must comply with “international law, and in particular human rights, refugee, and humanitarian law.” These resolutions do not provide enough necessary guidance for how to best ensure that adopted counter-terrorism measures are taken in accordance with international law.

Similarly, recent Security Council resolutions concerning judicial cooperation, resolution 2322 (2016) and critical infrastructure ,resolution 2341 (2017) demonstrate a trend of weaker human rights language. The resolutions refer to human rights in the preamble and in sporadic language that is different from previous resolutions. It appears that human rights protections were not a central concern in the resolution’s drafting, but language to be patched into the text.

2. GENERAL ASSEMBLY RESOLUTIONS

The General Assembly has been more proactive in calling for the promotion and protection of human rights in countering terrorism. The first resolution concerning terrorism and human rights, A/RES/48/122, was adopted on the 14th of February 1994. The resolution “unequivocally condemn[ed] all acts, methods and practices of terrorism in all its forms and manifestations” and also called “upon states, in accordance with international standards of human rights, to take all necessary and effective measures to prevent, combat and eliminate terrorism.”²²⁴ Since then, the General Assembly has adopted 19 resolutions concerning the agenda item “Protection of human rights and fundamental freedoms while countering terrorism” and “Human Rights and Terrorism.”²²⁵ Following the adoption of UNSC Resolution 1373 in 2001, which had no specific mention of human rights, the General Assembly adopted resolution A/RES/57/219 on 18 Dec 2002 focused specifically on the need to protect human rights while countering terrorism. This

224. UN Resolution A/RES/48/122: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/48/122&Area=UNDOC

225. UNGA List of resolutions: https://www.un.org/apps/news/infocus/terrorism/ga_resolution.asp

resolution requested the Office of the High Commissioner for Human Rights to take action in a variety of ways including making general recommendations concerning the obligations of states and providing assistance to states, upon request.²²⁶

3. DEFINITIONS OF TERRORISM, INCITEMENT, AND VIOLENT EXTREMISM

Counter-terrorism efforts at the United Nations continues without operational definitions of terrorism, terrorist acts, incitement, or violent extremism. In the absence of a universally agreed upon legal definition of terrorism and extremism, and an obligation to take “all necessary measures”²²⁷ to combat them, states may be tempted to craft their own overly broad definitions that can be exploited for unrelated offenses and further human rights abuse. This issue of lack of definitions and violations of the principle of legality²²⁸ was covered extensively in FIDH’s previous report “Counter-Terrorism versus Human Rights: The Key to Compatibility.”²²⁹ Furthermore, strategies and policies that are built on these legally undefined terms feed into broader catch-all phrases instrumentalized by states such as radicalization and ideology.²³⁰



Security Council voting against trade in ISIL (Da’esh) territories 12 February 2015
UN Photo/Loey Felipe

The Ad Hoc Committee mandated to draft a comprehensive convention on terrorism has been in deadlocked negotiations since 2002. The most recent draft was elaborated in 2007, but many

226. A/RES/57/219

227. Paragraph 5, S/RES/2249 (2015)

228. Article 4 of the International Covenant on Civil and Political Rights and Article 15 of the European Convention on Human Rights specifically prohibits derogation from the principle of legality.

229. Pg 21 - 23 FIDH: Counter-Terrorism Measures and Human Rights, Keys for Compatibility - October 2005 report available: <https://www.fidh.org/en/issues/terrorism-surveillance-and-human-rights/Counter-Terrorism-Measures-and>

230. For further review of the shortcomings of defining radicalization and its deployment in policy refer to: Borum, Randy, “Radicalization into Violent Extremism I: A Review of Social Science Theories,” *Journal of Strategic Studies*, <http://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=1139&context=jss>

member states such as the Representative of Liechtenstein stated that the draft text would not change and it was time to “finally seal the deal.”²³¹ It defines terrorism as:

Article 2

1. Any person commits an offence within the meaning of the present Convention if that person, by any means, unlawfully and intentionally, causes:

(a) Death or serious bodily injury to any person; or

(b) Serious damage to public or private property, including a place of public use, a State . or government facility, a public transportation system, an infrastructure facility or to the environment; or

(c) Damage to property, places, facilities or systems referred to in paragraph 1 (b) of the present article resulting or likely to result in major economic loss; when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

2. Any person also commits an offence if that person makes a credible and serious threat to commit an offence as set forth in paragraph 1 of the present article.

3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article. 10 A/59/894 4. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of the present article; or

(c) Contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of the present article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

. (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of the present article; or

. (ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of the present article.”²³²

231. Legal Committee Urges Conclusion of Draft Comprehensive Convention on International Terrorism

232. The current draft text available regarding the definition of terrorism is in Article 2 of a draft, added in the annex II of the Letter dated 3 August 2005 from the Chairman of the Sixth Committee addressed to the President of the General Assembly for the 59th session. Pg9-10, A/59/894

The remaining deadlock is focused on concerns over this legal definition of terrorism and the need to distinguish between acts of terrorism and the “legitimate struggle of peoples under foreign occupation and colonial or alien domination in the exercise of their right to self determination.”²³³ In addition, the debate rests on whether such definition would apply to armed forces and whether the draft should address all forms of terrorism including state terrorism.²³⁴

FIDH expressed its commitment to supporting then Secretary General Kofi Annan’s efforts in calling for a universal definition in an open letter.²³⁵

Practically, the most recognized definition of terrorism is outlined in UNSC Resolution 1566 (2004) that “defines” terrorism as:

*“...criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature”*²³⁶

The previous Special Rapporteur on Counter-Terrorism and Human Rights, Mr. Martin Scheinin, in his report in December 2010, argued that “in the absence of a universally agreed upon, comprehensive and concise definition of terrorism, counter-terrorism laws and politics must be limited to countering offenses that correspond to characteristics of conduct to be suppressed in the fight against international terrorism as identified” in UNSC Resolution 1566 (2004).²³⁷ The adoption of overly broad definitions of terrorism create the opportunity for deliberate misuse of the notion that can violate international human rights.

233. A/C.6/70/SR.27

234. Summary of work and proceedings: Measures to eliminate international terrorism (Agenda item 107) at the sixty-ninth session

235. FIDH “Lettre ouverte à Kofi Annan Secrétaire Général des Nations Unies” https://www.fidh.org/spip.php?page=article&id_article=2106

236. S/RES/1566 (2004)

237. Paragraph 27, A/HRC/16/51

The Special Rapporteur proposed a definition of terrorism:

"Terrorism means an action or attempted action where:

1. The action:

(a) Constituted the intentional taking of hostages; or

(b) Is intended to cause death or serious bodily injury to one or more members of the general population or segments of it; or

(c) Involved lethal or serious physical violence against one or more members of the general population or segments of it; and

2. The action is done or attempted with the intention of:

(a) Provoking a state of terror in the general public or a segment of it; or

(b) Compelling a Government or international organization to do or abstain from doing something; and

(3) The action corresponds to:

(a) The definition of a serious offence in national law, enacted for the purpose of complying with international conventions and protocols relating to terrorism or with resolutions of the Security Council relating to terrorism; or

(b) All elements of a serious crime defined by national law." ²³⁸

The Special Rapporteur went on to explain the need to also define "incitement to terrorism" which is even less precise. He recalled the Council of Europe's Convention on the Prevention of Terrorism which requires that the specific offense for incitement as "public provocation to commit a terrorist offense" is the "the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed."²³⁹

His model offence of incitement to terrorism is:

"an offence to intentionally and unlawfully distribute or otherwise make available a message to the public with the intent to incite the commission of a terrorist offence, where such conduct, whether or not expressly advocating terrorist offences, causes a danger that one or more such offences may be committed." ²⁴⁰

238. Paragraph 28,, A/HRC/16/51

239. Article 5, Council of Europe's Convention on the Prevention of Terrorism

240. Paragraph 32, A/HRC/16/51

As the debate concerning terrorism became more complex with the introduction of Secretary Ban Ki Moon's Plan of Action to Prevent Violent Extremism, the line between what is a dissenting voice²⁴¹ extremist narrative, and terrorist incitement is further blurred.

In the Plan of Action to Prevent Violent Extremism, the Secretary General stated that

*"Violent extremism encompasses a wider category of manifestations and there is a risk that a conflation of the two terms may lead to the justification of an overly broad application of counter-terrorism measures, including against forms of conduct that should not qualify as terrorist acts."*²⁴²

However, the Special Rapporteur stated that,

*"Despite the numerous initiatives to prevent or counter violent extremism, there is no generally accepted definition of violent extremism, which remains an 'elusive concept'... Conceptually, it has been challenging to differentiate between violent extremism and terrorism, with the two terms often used interchangeably and without a clear delineation of the boundaries between them. The position of the UN Secretary-General is that "violent extremism encompasses a wider category of manifestations [than terrorism]", since it includes other forms of ideologically-motivated violence. At the same time, the conditions conducive to violent extremism identified in the Secretary-General's Plan of Action, and the conditions conducive to terrorism identified in Pillar I of the Global Counter-Terrorism Strategy are almost identical."*²⁴³

The semantic relationship between violent extremism and terrorism is crucial as the terms are increasingly being used interchangeably in the international debate and in national "counter-terrorism" measures and policies.

4. PREVENTING VIOLENT EXTREMISM & HUMAN RIGHTS

The relationship between human rights and preventing violent extremism was led by the US who has been the main proponent of a countering/preventing violent extremism. The US pushed forward their violent extremism agenda at the UN Human Rights Council in 2015 to pass a resolution titled "Human rights and preventing and countering violent extremism."²⁴⁴ The vote was contentious with Ireland, the Netherlands, Norway, and the United Kingdom withdrawing their

241. Paragraph 27, A/HRC/16/51

242. Pg 2, Plan of Action to Counter Violent Extremism

243. Paragraph 11, A/HRC/31/65

244. Human Rights and Preventing and Countering Violent Extremism, A/ HRC/RES/30/15 (Oct. 12, 2015) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/232/04/PDF/G1523204.pdf?OpenElement>

co-sponsorship over the debate on the floor concerning the whether to address “ideology” or “action.”²⁴⁵ David Kaye, UN Special Rapporteur on Freedom of Expression, already raised concerns that states efforts to counter “violent extremism” could be the “perfect excuse for democratic and authoritarian governments around the world to restrict free expression and seek to control access to information.”²⁴⁶

1. The PVE agenda poses a greater threat to the promotion and protection of human rights by securitizing human rights instead of inherently valuing them.
2. Civil society human rights and development actors may run the risk of tailoring their programming to fit within the context of fighting undefined violent extremism instead of focusing on the needs of their community.

PVE at the United Nations is understood by member states to be enshrined in Pillar I (conditions conducive to) and Pillar IV (human rights) of the GCTS. The future of PVE will be lead by the OCT, demonstrating how concerns of “violent extremism” are now institutionally merged with countering terrorism. The OCT does not have dedicated staff focused on implementing PVE programs, but does have two dedicated staff focused on human rights and rule of law. However, it is unclear how the OCT will prioritize human rights in its approach to preventing violent extremism. As stated previously, Russia selected candidates for the USG position to lead the OCT. In Russia’s inputs regarding how the office should operate they believe that the PVE agenda was not a “separate independent topic” but part of the preventative pillar I of the GCTS, effectively removing human rights from the PVE equation. The UN Plan of Action to Prevent Violent Extremism mentions human rights almost fifty times, however, the Plan of Action was not endorsed or welcomed by the General Assembly.²⁴⁷ Consequently, human rights are not universally accepted as a core element in UN prevention efforts and are therefore at risk.

245. UN HRC: Resolution on “violent extremism” undermines clarity <https://www.article19.org/resources.php/resource/38133/en/un-hrc:-resolution-on-%E2%80%9Cviolent-extremism%E2%80%9D-undermines-clarity>

246. “Countering violent extremism, a ‘perfect excuse’ to restrict free speech and control the media – UN expert” (May 3, 2016): <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19916&LangID=E>

247. Draft resolution submitted by the President of the General Assembly, Secretary-General’s Plan of Action to Prevent Violent Extremism A/70/L.41, http://www.un.org/ga/search/view_doc.asp?symbol=A/70/L.41

4: COUNTER-TERRORISM, VICTIMS, AND CIVIL SOCIETY

1. VICTIMS OF TERRORISM

Supporting the human rights of victims of terrorism has been also discussed at the Security Council which established the 1566 working group in 2004 to consider establishing an international compensation fund for the victims of terrorist acts and their families.²⁴⁸ The final discussions concerning this international compensation fund with CTITF were inconclusive as demonstrated by the committee's last report in 2010. However, CTITF also has a Working Group on Supporting and Highlighting Victims of Terrorism that is formed by eight entities: CTITF, DPI, UNICRI, ICAO, UNODC, OHCHR, OCHA, and the Special Rapporteur on Promotion and Protection of Human Rights While Countering Terrorism.²⁴⁹ Additionally, UNODC launched a report on "Good Practices for Supporting Victims of Terrorism within the Criminal Justice Framework,"²⁵⁰ and the Global Counter-Terrorism Forum (GCTS) also adopted the Madrid Memorandum on "Good practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings."²⁵¹ Finally, the Special Rapporteur for Counter-Terrorism and Human Rights outlined a framework for supporting victims of terrorism in 2012, with subsequent recommendations for states and the CTITF.²⁵²

Most recently, UNCCT and CTITF hosted a UN conference on Human Rights of Victims of Terrorism on 11 February 2016 at the UN Headquarters, and a project on "Amplifying voices, building campaigns, Training and capacity building on the media in establishing a communications strategy for victims of terrorism" which held workshops in the Middle East and Sahel regions in 2016, but did not specify which countries.²⁵³ The UN's stand with victims of terrorism is merely symbolic, and the existence of the Portal might establish a place for victims and their families to access appropriate resources, but there has yet to be an international compensation fund for victims as discussed by the 1566 working group. Additionally, it remains unclear which body will be solely responsible for supporting victims of terrorism as the 1566 committee was tasked to explore options, in addition to CTITF which operates the working group and portal.

248. Working Group Established Pursuant to Resolution 1566 (2004)

249. CTITF Working Group on Supporting and Highlighting Victims of Terrorism, About Us

250. Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework, UNODC

251. "Madrid memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings" Global Counter-terrorism Forum (GCTF) Available here: https://www.thegctf.org/documents/10162/72352/13Sep19_Madrid+Memorandum.pdf

252. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson: Framework principles for securing the human rights of victims of terrorism. A/HRC/20/14 Distributed 4 June 2012. Available: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-14_en.pdf

253. UN Conference on Human Rights of Victims of Terrorism, Programme and Key Documents

In addition to supporting the rights of victims of terrorism the United Nations may also want to look into ways of supporting victims of counter-terrorism.

2. COOPERATION WITH CIVIL SOCIETY

Full respect of freedom of assembly, opinion, speech and peaceful demonstration and the right to use the media are essential to the action of civil society, and yet, they are being threatened. Throughout the world and increasingly, authorities are restricting the freedom of civil society and do not hesitate to adopt laws that increasingly kill these freedoms, by building up administrative barriers that prevent civil society organizations from operating, restricting NGOs access to funding, especially foreign funding, limiting their right to register, organizing checks on the associations' activities, or restricting their freedom of peaceful demonstration or gathering. As underlined by the Special Rapporteur on Counter-Terrorism and Human Rights, national and international counter-terrorism measures have "enabled Governments to clamp down on NGOs using counter-terrorism and national security to provide a veil of legitimacy for the suppression of legitimate human rights and humanitarian initiatives."²⁵⁴

Civil Society should be considered a vital partner in counter-terrorism efforts. In that respect, member states have been tasked through multiple resolutions to engage with civil society not only as a partner in counter-terrorism efforts, but also as a regulator. The value of having a variety of civil society actors involved should be underscored and as Special Rapporteur on counter terrorism and human rights stated:

*National and international non-governmental organizations (NGOs) can be key actors in effective counter-terrorism strategies...A vibrant civil society ensures that the voices of the vulnerable and marginalized are meaningfully included in the initiatives that have an impact on their civil, political and socioeconomic aspirations. In a very tangible sense, the work of civil society groups thus makes a direct contribution to addressing the conditions conducive to the spread of terrorism, as identified by the General Assembly in the Global Counter-Terrorism Strategy.*²⁵⁵

However, our organizations have been documenting and denouncing the rapidly shrinking space of civil society at national, regional, and international levels. In the current UN counter-terrorism architecture, there does not exist a mechanism or meaningful engagement with civil society actors, including independent human rights organizations. States are increasingly calling for cooperation with civil society on countering terrorist narratives, as requested by the Comprehensive

254. Promotion and protection of human rights while countering terrorism, 18 September 2015, A/70/371

255. Paragraph 7, A/70/371

International Framework to Counter Terrorist Narratives, and to address “conditions conducive to terrorism” in the context of the PVE Plan of Action. However, this has yet to materialize.²⁵⁶

This is compounded by the fact that there has been continued efforts by some member states to limit civil society’s participation in the UN system. Today, even though tens of thousands of NGOs have formal relationships with the UN system admissibility requirements as well as substantial criteria for the granting of consultative status have often proved unsuitable for human rights organizations in particular. This, together with the interstate composition of the politically biased ECOSOC NGO committee²⁵⁷ has resulted in two major flaws in the system, thus narrowing the space for independent and credible civil society organizations:

1. The prevention of independent human rights organizations obtaining admission
2. The promotion of Governmental NGOs (GONGOs) and business organizations

Furthermore, two major developments in the past two years illustrate that some of the very states that exercise control over the UN counter-terrorism architecture have also been very active in pushing back against civil society and human rights. During its 70th session, the UNGA adopted an important resolution titled “Recognizing the role of human rights defenders and the need for their protection”²⁵⁸ which calls for accountability for attacks on human rights defenders and urges states to release defenders who have been arbitrarily detained for exercising their fundamental rights to freedom of expression, peaceful assembly, and association. While normally adopted by consensus, that year China and Russia asked for the resolution to be put to a vote. Fourteen states among which, China, Russia, Saudi Arabia, and Pakistan voted against and Egypt abstained. In March 2016, the HRC in Geneva adopted a strong resolution focused on economic, social, and cultural rights defenders.²⁵⁹ The resolution reaffirmed those defenders legitimate work, their protection needs, and the states’ obligations in that respect. It also condemns attacks against human rights defenders within the global context of a shrinking space for civil society. The resolution was adopted in spite of attempts by a group of states led by Russia, Egypt, China, Cuba, and Pakistan to obstruct it by proposing numerous amendments that ran counter to its spirit and purpose. Those hostile amendments mirrored the position taken by those same states during the vote of the UNGA resolution in December 2015.

256. FIDH, member organization in Mali, Association Malienne des droits de l’Homme (AMDH) was contacted through the UN peacekeeping mission in Mali, MINUSMA to participate in a series of UNCCT meetings concerning the “Roles of Civil Society Organizations in the Prevention of Violent Extremism.” Of the fifteen participants, eleven represented national associations with AMDH being among the very few independent civil society representatives. While this inclusion is encouraging, FIDH hopes that there will be much larger involvement from independent civil society groups in UN counter-terrorism activities, especially human rights organizations.

257. The members of the ECOSOC NGO Committee from 2015-2018 are Azerbaijan, Burundi, China, Cuba, Greece, Guinea, India, Iran, Israel, Mauritania, Nicaragua, Pakistan, Russian Federation, South Africa, Sudan, Turkey, United States of America, Uruguay and Venezuela (Bolivarian Rep.

258. A/RES/70/161 http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/160

259. A/HRC/RES/31/32 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/083/21/PDF/G1608321.pdf?OpenElement>



CHAPTER 3

MAIN PRIORITIES ON THE UN
COUNTER-TERRORISM AGENDA
AND THEIR HUMAN RIGHTS IMPACT

FIDH decided to look into five specific UN counter-terrorism priorities and the human rights impact of their implementation, in country-specific situations (China, Egypt, France, Mali, Russia, Tunisia, and the United States), through national action plans, new legislations, capacity-building and technical assistance programs or regional cooperation ; these priorities, counter terrorism financing, PVE, UN regional cooperation, rule of law capacity building, and terrorist narratives and information and communication technology, are most often translated into draconian domestic laws and materialized in mass repression of dissenting voices, from journalists to human rights activists and political opponents or stigmatization of entire religious groups or social communities, that may, in return fuel more violent extremism and generate more terrorist acts.

1. COMBATING THE FINANCING OF TERRORISM

In the context of countering terrorism, the role of civil society has been viewed at times as a potential threat to the security of a state because of the threat of NGOs as potential conduits for foreign terrorist financing. Not to discount that there are genuine cases of non profits being used as a facade to move funds for terrorist groups; however, rather than a potential threat, civil society should largely be viewed as a necessary partner in counter-terrorism efforts through listening and working with communities to uphold free and security societies, an impossible task without constructive civil society engagement.

In that regard, states' efforts to regulate civil society should not impose measures that shrink the space for civil society and constrict its operations. This concern was underlined by the Human Rights Council in HRC 27/31 that stated it was:

"Deeply concerned that, in some instances, domestic legal and administrative provisions, such as national security and counter-terrorism legislation, and other measures such as provisions on funding to civil society, have sought to or have been misused to hinder the work and endanger the safety of civil society in a manner contrary to international law".²⁶⁰

Globally, there are increasing numbers of laws intended to regulate the activities of NGOs and NPOs in the name of national security and countering terrorism, which contain measures to restrict access to funding, particularly when sourced from abroad

260. A/HRC/27/L.24 <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G14/168/57/PDF/G1416857.pdf?OpenElement>

As recalled by the Special Rapporteur on the right to freedom of peaceful assembly and of association in his April 2013 report²⁶¹:

"In communication No. 1274/2004, the Human Rights Committee observed that "the right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by article 22 [of the International Covenant on Civil and Political Rights] extends to all activities of an association. Accordingly, fundraising activities are protected under article 22 of the Covenant, and funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with article 22. Other United Nations treaty bodies have emphasized the obligation of States to allow civil society to seek, secure, and utilize resources, including from foreign sources".

And Special Rapporteur, Ben Emmerson concurred that measures taken to curb the financial flows to terrorists have "had the indirect effect of restricting the space in which humanitarian and human rights NGOs are able to operate."²⁶²

First, the threat level for the abuse of NGOs as conduits of terrorist financing has not been adequately established and evaluated. In its technical guide for the implementation of resolution 1373 (2001), created in 2009 and currently under revision, CTED states that "the regulation of charities is among the most important measures to be taken by States to prevent terrorist financing and thus achieve compliance with... resolution 1373 (2001)."²⁶³ However, five years later at a workshop organized by the OSCE, CTED, and the Global Center on Cooperative Security on the abuse of non-profit organizations for financing of terrorism, it was noted that "The risk of NPO (Nonprofit organizations) abuse for terrorist purposes is generally perceived by many states represented at the workshop as relatively low."²⁶⁴ Then, in December 2016, at a foreign terrorist financing event sponsored by CTED, panelists underlined that the NGO sector must be constantly re-evaluated for its risk of foreign terrorist funding. Ultimately, the threat level non-profits pose to terrorist financing has not been sufficiently established to be understood as "one of the most important measures" taken by states.

Secondly, in the development of measures to regulate civil society to prevent terrorist financing, civil society is not viewed as a partner and does not have a seat at the table to advocate for their protection. At the recent CTED meeting in December 2016 regarding non-profits and terrorist

261. Paragraph 16, A/HRC/23/39

262. Promotion and protection of human rights and fundamental freedoms while countering terrorism, A/70/371

263. Page 12, PIA Section 1.1.6 (L/I/P): Regulation of charitable organizations, Technical Guide for the Implementation of Resolution 1373 (2001): http://www.un.org/en/sc/ctc/docs/technical_guide_2009.pdf

264. Regional Workshop Stresses Need for Dialogue to Prevent Abuse of Non-Profit Organizations for Financing of Terrorism, http://www.un.org/en/sc/ctc/news/2014-10-30_workshop_npo.html

financing, a representative of the Kyrgyz Republic and his co-panelist, a representative of the United Kingdom, stated that their risk-oriented approaches demanded constant evaluation in practice. The representative of the Kyrgyz Republic noted that after instituting new regulatory policies, 120 local NGOs protested against the state's definition of NGO criminality, the government created an expert sub-working group within the government to involve NGOs in mutual evaluations and protect non-profit's activities.²⁶⁵ This case illustrates that civil society non-profit organizations must have a voice to ensure effectiveness of counter-terrorism policies and to ensure that those policies do not contribute to undermining an environment conducive to sustainable civil society.

In the preamble of the recently adopted resolution 2368 (2017), the Security Council stated that it was:

*"calling upon non-governmental, non-profit, and charitable organizations to prevent and oppose, as appropriate, attempts by terrorist to abuse their status through risk mitigation measures, while recalling the importance of fully respecting the rights to freedom of expression and association of individuals in civil society and freedom of religion."*²⁶⁶

This call for civil society to prevent abuse of their status must be complemented by efforts to solicit civil society voices and views in preventative measures taken by the state. At the 2014 workshop previously noted, NGO representatives were invited to participate, however it is not clear what types of organizations participated, including if there were human rights organizations present. Given that Human rights organizations and defenders are usually the primary target of such preventative measures, they should be consistently present, especially when such discussions take place under the auspices of the CTITF working group that does not involve the OHCHR or the Special Rapporteur on counter-terrorism and human rights.

The Financial Action Task Force (FATF), an intergovernmental body that promotes policies to combat money laundering and is consistently involved in CTED country visits and UN counter-terrorism events has set regulatory recommendations for how to engage with non profit counter-terrorist financing. Cooperation with member states and the FATF was underlined in UNSC Resolution 1617 (2005) that explicitly urges "all Member States to implement the comprehensive international standards embodied in the Financial Action Task Force's (FATF) Forty Recommendation of Money Laundering and the FATF Nine Special Recommendations on Terrorist Financing."²⁶⁷ However, not all states have been successful in abiding by the recommendations. In 2012, the FATF released its best practice Recommendation 8 on combating the abuse of non-

265. FATF Terrorist Financing Conference, UN Headquarters, December 12, 2016-December 13, 2016

266. S/RES/2368 (2017)

267. S/RES/1617 (2005): [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1617\(2005\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1617(2005))

profit organizations, which has subsequently been updated as most recently as June 2017.²⁶⁸ Recommendation 8 defines a non-profit organization (NPO)²⁶⁹ and detailed the risk NPOs pose to terrorist financing abuse and avenues for regulation stating clearly that “not all NPOs are high risk and some may represent little to no risk at all.”²⁷⁰ The FATF further stated that states in developing NPO regulating policies should “involve a two-way, ongoing dialogue between governments and NPOs.”²⁷¹ After conducting its own research covering 14 countries in 2014, the FATF stated that NPOs most at risk of abuse for terrorist financing were in “service activities,” or programs providing social services, health care, housing, or education as opposed to “expressive activities” such as programs and groups focused on interest representation or advocacy.²⁷²

This recommendation is counter to the realities of many states that have drafted draconian NGO bills that target human rights organizations as demonstrated in the following cases.

RUSSIA

Russia, a permanent member of the Security Council, exerts significant influence over every branch of the United Nations counter-terrorism architecture. Russia believes that “the most effective response to terrorists is based on the state’s might combined with well-organized and cohesive civil society.”²⁷³

However, it appears that Russia is determined to curate civil society engagement to effectively silence dissent by repressing free and independent organizations with dissenting views through the use of counter-terrorism financing measures and repressive NGO laws. This task has been delegated to the Federal Bureau for Financial Monitoring (Rosfinmonitoring), that operates a “blacklist” of individuals and organizations that are unable to complete financial transactions in Russia.²⁷⁴ The most recent publicly available report of the Rosfinmonitoring shows that the 2014 « list » of individuals involved in extremist and terrorist activities amounted to 3610 private and 61 legal Russian persons and 380 and 88 legal « international » persons. In 2014, Rosfinmonitoring claims to have conducted over 6,000 anti-terrorist/extremist financial investigations and blocked

268. Best Practices on Combating the Abuse of Non-Profit Organizations, Financial Action Task Force (FATF)

269. Pg 7. The FATF definition of a non-profit organization: A legal person or arrangement or organization that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of “good works”.

270. Ibid, Pg 7.

271. Pg 17, Ibid.

272. The FATF conducted its own research and published a typologies report on “Risk of Terrorist Abuse in Non-Profit Organizations” that covered 102 case studies from 14 countries. Available here: <http://www.fatf-gafi.org/publications/methodsandtrends/documents/risk-terrorist-abuse-non-profits.html>

273. Speech given by Mr. Yevgeny Ilyin the Deputy Head of the Russian National Anti-Terrorism Committee to CTED on November 10th 2016

274. FIDH, “Russian Society Under Control” https://www.fidh.org/IMG/pdf/Russian_society_under_control.pdf

3,5000 accounts belonging to 1,527 listed persons.²⁷⁵

Measures taken to shrink, silence, and regulate civil society in Russia are taken in the name of national security, national unity, and foreign terrorist financing. In theory these efforts must comply with the recommendations of the Financial Action Task Force (FATF), of which Russia is a member organization. In 2008, the FATF determined that Russia was only partially compliant with its standards.²⁷⁶ In a follow-up mutual evaluation, the FATF found that Russia had improved its compliance, but regarding NPOs stated that there is “inconsistent outreach to the NPO sector to provide guidance” and “no single authority is formally designated as the competent authority responsible for coordinating Russia’s domestic efforts regarding NPOs.”²⁷⁷ Russia does not seek to meaningfully prevent foreign terrorist financing in the NPO sector guidance, but instead shrink the space for civil society to operate in the name of national security.

Russia held the FATF Presidency from June 2013 to 2014 where it most recently amended the FATF terrorist financing standards to include not only financial support but also hydrocarbons and other resources. Russia stated recently at a CTC event concerning terrorist financing in December 2016 that from 2015-2016 Russia had identified 1400 persons associated with ISIL (Da’esh) and froze 1500 bank accounts with assets totaling USD \$120,00 and “among them are, in particular, those who directly finance terrorism”²⁷⁸ Russia is also a member of a “FATF Style Regional Body (FSRB),” the Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG), which regularly participates in CTC country visits and is currently chaired by the head of the Russian Financial Intelligence Unit and Director of the Federal Financial Monitoring Service (Rosfinmonitoring). This is another example of Russia’s geopolitical influence through counter-terrorism entities that increasingly interact with the United Nations.

In 2006, Russia made amendments to a 1996 Law on Non-Governmental Organizations organizing NGOs and their activity in Russia. President Vladimir Putin was quoted as saying that the 2006 revised law was needed to “combat terrorism and stop foreign spies using NGOs as cover.”²⁷⁹ The Law amended four legislative corpus: “Public Associations,” “Non commercial Organizations,” “Closed Administrative Territorial Formations,” and the Civil Code. These amendments increased the state’s intrusive power in controlling NGOs. The law empowered authorities to deny registration

275. Pg 22-23, Activity Report 2014 of Rosfinmonitoring available at : <http://www.fedsfm.ru/en/about/activity-reports>

276. Summary of the Second Mutual Evaluation Report - Anti-Money Laundering and Combating the Financing of Terrorism : Russian Federation: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Russia%20ES.pdf>

277. FATF Mutual Evaluation of the Russian Federation: 6th Follow-Up Report, Pg 26-27. <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/FUR-Russian-2013.pdf>

278. December 12, 2016: Statement of Mr. Dmitry V. Feoktistov Deputy Director of the Department on new challenges and threats of the Ministry of Foreign Affairs of the Russian Federation at the Special Joint Session of the UN Security Council Counter-Terrorism Committee, the UN Security Council ISIL (Da’esh) and Al-Qaida Sanctions Committee, the FATF and other relevant multilateral organizations. Available from the CTC: <https://www.un.org/sc/ctc/blog/2016/12/14/joint-special-meeting-on-terrorist-financing-assesses-risks-and-identifies-way-forward/>

279. Elif Kaban, “Foreign Humanitarian Agencies Suspend Work in Russia,” Reuters, Oct. 19, 2006, available at Relief Web: <http://reliefweb.int/report/russian-federation/foreign-humanitarian-agencies-suspend-work-russia>

to organizations whose goals were considered a threat to the national interests of Russia, to require proof of residency from founders of NGOs, to stop the programs of foreign NGOs and the transfer of their funds, to require NGOs to submit extensive audits, unlimited documentation, and allow uninvited government representatives at NGO's events.²⁸⁰

Many of these efforts to suppress NGOs and civil society are conducted in the name of countering terrorism but in the following years, Russia has continued to tighten their grip on civil society by signing a law in 2012 that required all NGOs that were involved in political activities to register as "foreign agents." The full law was titled "On Amendments to Legislative Acts of the Russian Federation regarding the Regulation of the Activities of Non-profit Organizations Performing the functions of a Foreign Agent." This law, reminiscent of the Soviet area, requires NGOs deemed "foreign agents" to undergo financial audits and bi-annual reports, mark all official statements as being a "foreign agent," with a failure to comply possibly resulting in heavy fines or a two year prison sentence. After the law was signed by President Putin, NGOs have been subjected to harassment, with reported NGO raids against human rights organizations which are accompanied with TV crews from the state television channel.²⁸¹

Currently, the list of 'foreign agent's consists of 91 human rights, ecological, public opinion and charity NGOs from all over Russia. The charges against these organizations demonstrate Russia's desire to curate civil society voices and particularly silence those who shine a light on human rights abuses.

For example, on December 30, 2016 the Sova Center was identified by the Russian authorities to be on the Foreign Agents list, as they focus on the documentation of unjustified crimes and human rights violations committed under anti-extremist legislation. Two months later, on February 21, 2017, the SOVA Center was actually fined 300, 000 roubles (approx. 4700 Euro or 5000 USD) for having failed to voluntarily register itself as a 'foreign agent' before it was done by the Ministry of Justice.²⁸²

On April 20, 2017 the Kola Eco Center (an ecological NGO from Murmansk Region) was identified as a 'foreign agent' and fined for 150 000 roubles (approx. 2350 euro). The grounds for including the organization on the list were joint projects with Norwegian partners and receiving a grant of 500 000 NOK from Norwegian Public Charity Organization. The Ministry of Justice concluded that the activities of the Center focus on "dissemination, including with the use of modern information technologies, of opinions on decisions taken by state bodies and policies pursued by them," thus

280. United States Commission on International Religious Freedom, Challenge to Civil Society: Russia's Amended Law on Noncommercial Organizations: http://www.uscirf.gov/sites/default/files/resources/stories/pdf/russia_ngo_report_final_march5.pdf

281. Russia raids human rights groups in crackdown on 'foreign agents' <https://www.theguardian.com/world/2013/mar/27/russia-raids-human-rights-crackdown>

282. SOVA Center Included on the "Foreign Agents" List <http://www.sova-center.ru/en/xenophobia/news-releases/2017/01/d36135/>

demonstrating how vague the FNGO law is and how it can be instrumental for the state in a variety of sectors.

So far, the first and only case of compulsory liquidation of an NGO listed as ‘foreign agents’ has been the AGORA Association, a human rights NGO from Kazan (Tatarstan). The AGORA Association was liquidated in February 2016 by the decision of the Supreme Court of Tatarstan based on the case of the Ministry of Justice mentioned above. In delivering the decision, the judicial authorities referred to numerous violations of the FNGO law citing 5 publications made by members of the Association that did not label the publications as being “done by foreign agents,” including a report on the internet freedom in Russia.

Currently, the case of 48 Russian NGOs that have suffered under the FNGO law is being heard by the European Court of Human Rights. It is worth mentioning that the UN High Commissioner for Human Rights and the Commissioner for Human Rights of the Council of Europe are involved in the proceedings, in support to those organizations’ freedom of association.

CHINA

The People’s Republic of China (PRC) recently adopted new counter-terrorism legislations to promote state security, state stability, and a similar vision of social cohesion through government regulation to create a cohesive civil society. In reality, these laws are not compliant with international norms and empower the government to crackdown on civil society, silence dissent and violate basic human rights. China’s most recent counter-terrorism law came into effect on January 1, 2016 as part of a package of recently adopted laws concerning national security: The National Security Law, Counter-Terrorism Law, and Cybersecurity Law.²⁸³ This package is complemented by two pieces of legislation, the Charity Law and the Law on the Management of Foreign Non-Governmental Organizations, that severely restrict the space for civil society organizations and bring registered activities under the supervision of police, preventing new and constructive civil society collaborations with the government.

In addition, three draft regulations have been introduced to expand the registration of civil society organizations, specifically foundations, social service agencies and “social groups.” Counter to the

283. This law consists of 97 articles in 10 different chapters. The focus of the chapters is in issues such as terrorism designation [chapter 2], prevention [chapter 3], intelligence gathering [chapter 4], investigation [chapter 5], emergency response [chapter 6], international cooperation [chapter 7], safeguards [chapter 8] and legal abilities [chapter 9]. Other laws that were a part of this package included the National Security Law, effective on 1 July 2015, the Law on the Management of Overseas NGOs Activities in Mainland China, effective on 1 January 2017, and the draft Cyber Security Law that is currently being discussed in the National People’s Congress.

FATFs recommendation that organizations focused on “service activities” pose the greatest risk of providing material support, these are exactly the types of organizations that are allowed to operate and partner with the state. These regulations give China an arsenal to target civil society under the guise of national security and the justification of preventing terrorism, extremism, and separatism.

COUNTER-TERRORISM LAW

Relevant provisions of the Counter-terrorism Law, effective January 1, 2016, include the delegation of additional powers to public security authorities and the reinforcement of the government’s broad discretionary powers to investigate and prevent incidents of terrorism. The law states that “all units and individuals have the obligation to assist and cooperate with relevant government authorities in carrying out counter-terrorism efforts.” Authority is also given to financial institutions and designated non-financial organizations to immediately freeze capital or other assets of « terrorist » organizations and personnel determined by the government. In a circumstance where “sensitive” human rights NGOs can be seen as terrorist organizations under the broad definition of terrorism, the Counter-terrorism Law places heavy restrictions on NGOs, including financial restrictions.

CHARITY LAW

The Charity Law of the People’s Republic of China,²⁸⁴ made effective on September 1st, 2016, gives the state the power to shut down civil society groups that are deemed to “harm national security,”²⁸⁵ by revoking their registration. Concerning the financing of terrorism, the law also states that charities must not “defraud assets falsely in the name of charity or pretending to be charitable organizations.”²⁸⁶ The law does not explicitly mention that all organizations must register with the government, but it makes it difficult to raise funds domestically. The law and its impact must be understood in the context of the PRC’s national legal counter-terrorism framework, where all references to national security are vague and undefined. The ambiguity of the law effectively allows the PRC to shut down charitable organizations that might present a dissenting view to the state in the vague name of national security.

THE FOREIGN NON-GOVERNMENTAL ORGANIZATIONS LAW (FNGO)

The Foreign Non-Governmental Organizations Law (FNGO), effective on January 1st, 2017, increases state’s oversight of foreign NGOs by security authorities with regards to their work,

284. National People’s Congress, Charity Law of the People’s Republic of China: Unofficial English Translation (<http://www.chinalawtranslate.com/2016charitylaw/?lang=en>)

285. Article 104, PRC Charity Law.

286. Article 107, PRC Charity Law.

finances, and staff.²⁸⁷ Specifically, Article 5 states that foreign NGOs “must not endanger China’s national unity, security, or ethnic unity; and must not harm China’s national interests, societal public interest and the lawful rights and interests of citizens, legal persons and other organizations.”²⁸⁸ The law requires that FNGOs that have been operating in China must now decide how to accept the government’s intrusive oversight into their operations, activities, and programs. Concerning foreign terrorist financing, Article 44 states that :

“The administrative department for countering money-laundering under the State Council lawfully conducts supervision and management of the opening and use of bank accounts by foreign NGOs, Chinese Partner Units, and also of units or individuals in mainland China who receive funds from foreign NGOs, for compliance with legal provisions against money-laundering and against financing terrorism.”

Most importantly, it ensures that any unregistered organization is treated as an illegal organization. This runs counter to the opinion of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association mandated by resolution 15/21 who recognizes that “everyone has the right to freedom of peaceful assembly and of association... including unregistered groups.”²⁸⁹

DRAFT REGULATIONS: FOUNDATIONS, SOCIAL GROUPS, SOCIAL SERVICE AGENCIES

The proposed draft regulations regarding these restrictions extends the state’s supervision into Foundations, Social Groups, and Social Service agencies. According to the draft regulations, there are requirements that make these types of civil society organizations subject to daily monitoring and political oversight. This means that they must comply with restrictive regulations that make their domestic environment unsafe and disabling.

FIDH’s member organization, Human Rights in China, stated that these laws and draft regulations are “in fact a step backward from efforts to ensure a safe and enabling environment for civil society.”²⁹⁰ These suite of laws empower the state to criminalize the activities of NGOs whom they deem violate a vision of “national unity” for the Communist party.

Several individuals linked to foreign individuals have been detained since the FNGO Law went into effect, but not directly for failure to register under the Law. On May 26, 2017, Taiwanese

287. Standing Committee of the National People’s Congress, People’s Republic of China Law on the Management of Foreign Non-Governmental Organizations’ Activities within Mainland China. <http://www.chinalawtranslate.com/2016-foreign-ngo-law/?lang=en> The following articles detailed by FIDH, member organization, Human Rights in China reference articles 17,19,,22,23,24, 25, 27. 30,3, 32

288. FNGO Law, Article 5

289. A/HRC/20/27

290. Human Rights in China, Universal Periodic Review Mid-Term Progress Assessment of China, “The China Challenge To International Human Rights: What’s At Stake?” p. 33 (November 2016), http://www.hrichina.org/sites/default/files/hric_upr_mid-term_assessment_11.06.2016.pdf

human rights activist and NGO worker Lee Ming-che was formally arrested for “subverting state power.”²⁹¹ One day later, three labor activists affiliated with China Labor Watch (CLW), a New York based labor rights NGO, were detained in China for the unlawful use of devices for eavesdropping or secret photographing.²⁹² However, “in both Lee’s and the CLW employees’ cases, the Foreign NGO Law could either be the underlying motivation for punitive action, a justification for punishing activity that is otherwise deemed unacceptable, or simply a secondary consideration.”²⁹³

EGYPT

In the latest episode of its long history with terrorism, Egypt has declared a state of emergency on April 9th, 2017 after Da’esh’s twin attacks in Coptic Churches on Palm Sunday claiming the lives of over 45 people. As the Chair of the UN Security Council Counter-Terrorism Committee, Egypt exercises great influence in developing counter-terrorism policy at the international level. However, its commitment to counter terrorism, on its soil, in accordance with international human rights law, has been called into question as the government’s repressive measures have resulted in many documented cases of enforced disappearances, extrajudicial executions, and torture from detention facilities to the Sinai region.

Likewise, Egypt’s counter-terrorism legislative framework has created a blunt tool to crackdown on civil society and human rights defenders in the name of national security, hinting at an alternative political agenda. One of the tools used to move against human rights organizations and human rights defenders is through the use of counter-terrorism financing measures as a justification for arbitrary and repressive measures against Egyptian NGOs.

Egypt’s main legislative counter-terrorism provisions lie in the Counter-terrorism Law adopted on August 15, 2015, a draconian law that increased authorities’ power to impose heavy sentences, including the death penalty, for crimes under a very broad definition of « terrorism » and gave prosecutors greater power to detain suspects without judicial review and order wide-ranging and potentially indefinite surveillance of terrorist suspects without a court order »²⁹⁴.

On December 13, 2016, at a special meeting of the CTC focused on terrorist financing risks, Egypt, represented by the President of the Court of Appeals, presented additional measures taken to

291. “China arrests visiting Taiwan activist for ‘subversion’ following ‘confession,’” AFP. <https://www.hongkongfp.com/2017/05/27/china-arrests-visiting-taiwan-activist-subversion-following-confession/>

292. Batke, Jessica, “Possible Foreign NGO Law-Related Detentions: What We Know, and What We Don’t” <http://www.chinafile.com/ngo-analysis/possible-foreign-ngo-law-related-detentions-what-we-know-and-what-we-dont>

293. Ibid.

294. For more details, see HRW statement: <https://www.hrw.org/news/2015/08/19/egypt-counter-terrorism-law-erodes-basic-rights>

comply specifically with terrorist financing UN Security Council resolutions. . Egypt's presentation highlighted two key pieces of legislation that are used in relation to terrorist financing:

- Article 21 of Anti-Money Laundering (AML) Law: "The Unit shall take the necessary measures to carry out Egypt's commitments according to international conventions, treaties, and charters with respect to terrorist financing and the financing of the proliferation of weapons of mass destruction."
- Article 2 of Law no. 8 of 2015 on « Terrorist Entities and Terrorists: "The Public Prosecution prepares a list called the list of terrorist entities (and terrorists) to include terrorist entities as decided by the competent chamber to be designated in this list in addition to those entities against which final criminal conviction is passed."

Egypt claims that "any concerned party of the Public Prosecution may challenge listing decisions," but in practice Egyptian human rights NGOs demonstrate that this is not the case.

Apart from its AML law, Egypt points to their use of a terrorist entities list in Law No. 8 to direct their counter-terrorism financing efforts. However, on January 12, 2017, the Egyptian courts demonstrated their indiscriminate use of designating individuals and organizations as terrorist entities, by designating 1500 citizens as terrorist for their alleged relations with the Muslim Brotherhood. This follows Egypt's new Terrorist Entities Law of 2014 that defined a terrorist entity as:

any association, organization, group or gang that practices, aims at or calls for destabilizing public order, endangers society's well-being or its safety interests or endangers social unity by using violence, power, threats or acts of terrorism to achieve its goals.²⁹⁵

FIDH member organization, the Cairo Institute for Human Rights Studies (CIHRS), has criticized and challenged this legislation as the vague wording of the legislation allows the state to crack-down on peaceful political expression and empowers the state to designate organizations with opposition voices as terrorists. Though guaranteed by Egypt's constitution, freedom of expression is being sacrificed in the name of security.²⁹⁶ Even though Egypt's President of the Court of Appeals states that any party can challenge listing decisions, there is a lack of due process for designated entities. Groups are allowed to appeal, but the process can take up to three years

295. Egypt passes new law on 'terrorist entities' <http://www.al-monitor.com/pulse/originals/2014/12/egypt-law-terrorist-entities-muslim-brotherhood.html>

296. "Article 65: Freedom of thoughtFreedom of thought and opinion is guaranteed. All individuals have the right to express their opinion through speech, writing, imagery, or any other means of expression and publication. Constitution of the Arabic Republic of Egypt 2014: Unofficial Translation: <http://www.sis.gov.eg/Newvr/Dustor-en001.pdf>

where the Egyptian government does not have to present any evidence of its claims.²⁹⁷

In April 2017, the Egyptian Parliament approved a new set of repressive amendments to several laws including Law n°8 of 2015 and Counter-terrorism Law n°94 of 2015, giving the authorities « sweeping powers to carry out mass arbitrary arrests, enable indefinite detention without charge or trial and will severely undermine due process and fair trial guarantees », according to human rights groups²⁹⁸.

The legislative framework to prevent foreign terrorist financing including the Terrorist Entities Law and Anti-Money Laundering law is coupled with the recently ratified repressive NGO law that essentially eliminates civil society.²⁹⁹ The Law 70 of 2017 on Associations and Other Foundations Working in the Field of Civil Work was adopted by the Egyptian Parliament on 15 November 2016 for review by the state council. The bill was then ratified by President Sisi on May 29th 2017. This law is intended to replace the Mubarak-era Law 84 (2002) on Non-Governmental Organizations.³⁰⁰ The first NGO Law 84, already repressive, was reviewed in the MENA FATF Mutual Evaluation in 2009 which came to the conclusion that :

"Egypt has reviewed its laws and regulations governing the operations of NGOS. The review is not necessarily for terrorist financing purposes. The reviews have resulted in creating a strict legal framework an operating environment in which the NGOs carry out their activities...NGOs complain that it is strictly applied and that the Ministry interferes in the operations of the NGOs."³⁰¹

This strict legal framework and environment was made more draconian and removed from the genuine prevention of terrorist financing in the newly adopted NGO bill of 2016 ratified by President Sisi. As FIDH previously declared, the bill might effectively mean the end of Egypt's human rights movement, and might wipe out independent civil society in the country as a whole by setting NGOs firmly under control of the government and security establishment.³⁰² Article 62 of the law stipulates that any foreign organizations must only take part in activities that align with the government's development plans and are not of any political nature that "may cause harm

297. Egypt cabinet approves new 'terrorist entities' law, 27 November 2014: <http://english.ahram.org.eg/NewsContent/1/64/116565/Egypt/Politics-/Egypt-cabinet-approves-new-antiterrorism-law.aspx>

298. For more details, see Amnesty International's statement of April 19, 2017: <https://www.amnesty.org/en/latest/news/2017/04/draconian-amendments-to-egyptian-laws-spell-further-disaster-for-human-rights/>

• Amendment to paragraph 2 of Article 3 of Law no. 8 of 2015 on "Terrorist entities and Terrorists" "gives the Public Prosecutor the power to submit to courts lists of entities and persons to be designated as "terrorists" based only on "police investigation or information", and without the need for the public prosecutor to carry out investigations and interrogations to verify the police investigations and information".

• Amendment to para 3 of article 40 of Law no 94 of 2015 increases the period of time a person can be held in custody before being presented to a prosecutor or other investigative authority for questioning or charging, from 7 to 14 days, which may "facilitate enforced disappearances, torture and other ill-treatment, as well as coerced "confessions".

299. FIDH Statement, "EGYPT: Elimination of civil society signed into law by President Sisi" <https://www.fidh.org/en/issues/human-rights-defenders/egypt-elimination-of-civil-society-signed-into-law-by-president-sisi>

300. For information regarding all of the elements of NGO bill's provisions please see the FIDH statement "Egypt's Draft NGO Law Dismantles Civil Society", <https://www.fidh.org/en/issues/human-rights-defenders/egypt-s-draft-ngo-law-dismantles-civil-society>

301. Pg 161-162, MENAFATF "Mutual Evaluation Report: Anti-Money Laundering and Combating the Financing of Terrorism"

302. Ibid

to the national security, public order, public morals or public health.” This law also enhanced measures to prevent foreign terrorist financing by adding to the list of prohibited activities “calling for supporting or financing of terrorist organizations or violence” laid out in Article 23. This article goes on to state that the NGO must notify the state for approval of any funds received and that any amount over 10,000 Egyptian pounds cannot be received without Egypt’s Central Bank audit or through a paper check.

The State authorities have instrumentalized the issue of foreign terrorist funding to attack human rights organizations and defenders in the foreign funding case 173 against NGOs. Case 173 began in 2011, when the Minister of Justice ordered a committee to look into the foreign funding received by civil society organizations. To the best of lawyers’s knowledge, case of 173/2011 rests on three charges in the Egyptian Penal Code, which directly relate to vague notions of national security and preventing foreign terrorist funding. One charge under Article 78 of the Egyptian Penal code, which was amended in 2014, carries a life imprisonment for those receiving money from abroad for the purposes of

*pursuing acts harmful to national interests or destabilizing general peace or the country’s independence and its unity or committing hostile acts against Egypt or harming security and public order.*³⁰³

The two other charges are laid out in :

- Article 78 of Egypt’s Penal Code (as amended by President al-Sisi in September 2014), which now carries a life imprisonment sentence for the receipt of money from abroad for the very vaguely-worded purposes of “pursuing acts harmful to national interests or destabilizing general peace or the country’s independence and its unity, or committing hostile acts against Egypt or harming security and public order.”
- Article 98(c)(1) of the Penal Code, which carries a penalty of six months’ imprisonment for anyone who “creates or establishes or manages an association or organization or institution of any kind of an international character, or a branch of an international organization, without a license.”

303. For more information regarding the background of the case, the timeline of events, and those at risk of being prosecuted. Egypt: Imminent Risk of Prosecution of HRDs accused of committing human rights work - Joint background info on Case. No. 173 - the case against human rights NGOs, September 15, 2006, Cairo Institute for Human Rights Studies. <http://www.cihrs.org/?p=19002&lang=en>

- Article 98(d) of the Penal Code, which carries a penalty of five-year imprisonment for “all those who receive or accept directly or via an intermediary by any means, money or benefits of any form from a person or entity outside the country or inside it, when the purpose is to commit a crime listed in 98(1), 98(1)(bis), 98(b), 98(c), or 174 of this Code.”
- Article 76(2)(a) of the Associations Law, number 84/2002, under which failure to register is punishable by imprisonment of up to six months, and payment a fine equal to the sum of the funds received”.³⁰⁴

However, as CIHRS states, the only evidence of these crimes presented, that are a supposed violation of national security, are in fact the actual work of the human rights organizations targeted.³⁰⁵ The security official who presented the “evidence” stated that the human rights organizations work was to harm “national security” and “spread instability in Egypt.” Furthermore, it must be underlined that in Egypt NGOs are registered as limited-liability or NPO organizations that must already operate transparently with regards to their funding. NPOs depend only on grants, which must be transferred through banks that are controlled by the Central Bank authority, illustrating that their actions do not amount to “espionage” or “conspiracy.”³⁰⁶ Since July 2016, Egyptian courts have frozen the assets of 7 NGOs and 10 human rights defenders.³⁰⁷

Recently, on April 13, 2017, many Egyptian NGO leaders were summoned regarding the resumption of the case including two former employees of FIDH member organization, CIHRS, who were interrogated on charges of “aiding and abetting others in the receipt of foreign funds for an unregistered entity in order to disrupt national security.” Since early 2016 when the case was resumed, CIHRS identified the consequences of the case and its attack on civil society. These include:

- Travel bans that left 18 leading human rights activists inside the country
- Recent arrest of women’s rights defenders
- Unlawful closure of El Nadeem Center, an NGO supporting survivors of torture and gender-based violence
- Asset freezes of human rights organizations which lead to their closure

The Egyptian Government has demonstrated that their efforts to prevent foreign terrorist financing in NGOs are actually efforts to target human rights and other civil society critical of the regime, undermining their primary goal.

304. Ibid, CIHR Background Info.

305. The evidence presented in charges against one organization were “107 screenshots” of the organizations work online.

306. Briefing Paper on Case No. 173 “The Egyptian Government’s Strategy to Dismantle Human Rights NGOs and Retaliate against human rights defenders with long-term imprisonment” Cairo Institute for Human Rights Studies.

307. Ibid, pg 13.

2. PREVENTING VIOLENT EXTREMISM

The Secretary General's Plan of Action to Prevent Violent Extremism (PVE) called on states to align with the PVE agenda by instituting their own National Action Plans (NAP). However, the creation of National Action Plans focused on preventing a legally undefined threat runs the danger of superseding the current counter-terrorism strategies of some states to create a space for human rights abuses and securitize development and human rights work. This concern was underlined by the Special Rapporteur who stated that:

*Given the absence of any attempt at a definition at the international level and the broad national definitions, the use of the term as a basis for the adoption of new strategies, measures and legislation may prove even more dangerous for human rights than the term terrorism.*³⁰⁸

FIDH calls on UN counter-terrorism entities to advance the PVE agenda with caution in order to effectively develop a stricter and more narrowly-tailored approach to combating “violent extremism” only when conducive to terrorism and terrorist acts. The danger in implementing National Action Plans for PVE is that the broader prevention objectives of supporting human rights and preventing conflict are subsumed in the PVE agenda when it should ideally be the other way around. Addressing the drivers of terrorism ought to be dealt with, but this should be done through a strictly tailored approach. Finally, the development of National Action Plans must be grounded in evidence based needs assessment that takes into account the national human rights situation to determine the push and pull factors of terrorism.

308. Paragraph 35, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/31/65

The plan of action outlines what states should consider when developing a National Action Plan to address the local drivers of “violent extremism” :

- NAPs should be multidisciplinary involving many different government actors including social service providers, youth and religious affairs, law enforcement, education, cultural and educational leaders, civil society, media, and the private sector
- NAPs should “fortify the social compact against violent extremism” by promoting transparent and equal protections for citizens under the law and develop effective and accountable institutions by also providing the “legislative foundation for national plans of action” as consistent with their national and international obligations.
- NAPs should address the phenomena of foreign terrorist fighters and ensure legal systems address prosecuting those who travel for terrorism, suppress the financing of their activities, and prevent entry or transit through their territory by referring to the 35 guiding principles decided at the meeting of the CTC in Madrid
- NAPs should prevent the trade of oil and antiquities, hostage-taking, and receiving donations (resolution 2129) to terrorist groups and “violent extremists”
- NAPs will address the drivers of violent extremism by aligning with the 2030 Sustainable Development Goals (Specifically goal: 1, 4, 5, 8, 10, 11, and 16)
- NAPs should allocate funding for program implementation by both government, non-governmental bodies, and public-private partnerships
- NAPs should have “effective monitoring and evaluation mechanisms for NAPS to ensure their impact³⁰⁹

In the section of the Plan of Action that details the elements NAPs should address, there is no explicit mention of human rights. The PVE Plan of Action notes that UN counter-terrorism bodies, including the “36” entities of the CTITF and “All United Nations” approach are ready to support the Member States in the development of their National Action Plans. The UNCCT and CTED as part of their co-chairmanship of the CTITF Working Group of the Whole on National and Regional Counter-Terrorism Strategies sponsored a conference in Bogota regarding strategies to provide member states with guidance on instituting national action plans.³¹⁰

One of the weaknesses of the PVE agenda is its lack of best practices of monitoring and evaluation tools, despite the mention that it is essential for a successful National Action Plan. However, there are no publicly available for best practices and tools for monitoring and evaluating National Action Plan success.

309. UN Plan of Action to Prevent Violent Extremism A/70/674

310. For a detailed report of the discussions please review the Summary of Discussions International Conference on National and Regional Counter-Terrorism Strategies Bogota, Colombia 31 January - 1 February, 2013, The report states that one of the overarching principles in developing National Counter-Terrorism Strategies was that any strategy must rely on also “human rights and rule of law dimensions” https://www.un.org/counter-terrorism/ctitf/sites/www.un.org.counter-terrorism.ctitf/files/Bogota_Jan-Feb2013.pdf

In December 2016 a meeting on Preventing Violent Extremism National Action Plans was chaired and sponsored by the UK, UAE, and Netherlands (with additional representatives from Morocco, Hedayah, Counter Extremism Project, and CTITF) to discuss and share successful violent extremism programs and best practices regarding National Action Plans. The event elucidated that in reality, the PVE agenda was sidelined by State actors as being “soft security,” typically underfunded, and ultimately not taken as seriously by states as traditional kinetic counter-terrorism operations.³¹¹ At this meeting, the Netherlands noted that the main challenges for the development of their National Action Plans (NAPs) is the lack of monitoring and evaluation of their programs, and posed the question to other participants on what were their own best practices for evaluating their PVE programs.

Ultimately, the discussions centered around the role of civil society, civil society’s current level of involvement, and how they could share the responsibility of the PVE agenda.

At the national level, the PVE agenda has been adopted by many States and refocused dramatically. While the PVE action plan provides recommendations and the conversation around violent extremism at the UN aims to create non-military tools to combat terrorism, they also serve as a legitimizing force for states to criminalize undefined “violent extremism” and pursue draconian policies that securitize social programming in the name of national security.

RUSSIA

A key element of Russia’s counter-terrorism framework is its focus on the fight against extremism as a separate criminal offense where its lack of a clear definition allows for flexible interpretation that has led to human rights violations. Russia’s war against extremism predates the UN Plan of Action to Prevent Violent Extremism. Russia criminalized extremism as a separate offense in the Federal Law on Countering Extremist Activity in 2002. The fight against “extremism” and its interchangeability with “terrorism” was similarly enshrined in 2002 the charter of the Shanghai Cooperation Organisation (SCO), a regional security organization which Russia leads with China and is detailed in the subsequent section. The differentiating factor between whether an act is one of “terrorism” or “extremism” is subject the suspects motivation (extremist), not the suspects purpose (terrorist).

311. Egypt noted that some states did not have the financial capacity to develop the programs and would require additional funding from other countries. It was noted that the European Union was providing funds to states for implementing PVE programs and noted by others that many of the programs did not require much additional funds but different resources to develop campaigns and counter-messaging programs.

Under the Russian Criminal Code crimes “committed by reason of political, ideological, racial, national or religious hatred or enmity or by reason of hatred or enmity with respect to some social group” are categorized as extremist crimes.³¹² However, the 2002 Law does not clearly define extremism, but instead provides a list of violent and nonviolent acts that can be categorized as “extremist.”³¹³ Since 2002, the law has been amended to extend the definition of extremism to include those who criticize federal and local government officials, official policies, laws, and ideas which is a condition that has been recently used in charging those who vocalize their opposition to Russia’s annexation of Crimea with extremism. Additionally, the 2002 Law on Extremism charges the Ministry of Justice to compile a list of organizations and publications deemed “extremist. As FIDH previously noted “the impression is that the State has, through this law, created a mechanism of political and ideological control that is extremely damaging to freedom of speech and freedom of religion.”

Recently, in June 2016, the European Commission against Racism and Intolerance (ECRI) published its “Conclusions on the Implementation of the Recommendations in Respect of the Russian Federation” where it stated that Russian authorities have ignored ECRI’s recommendation to revise the definition of extremism in the Federal Law on Combating Extremist Activity to ensure that it only applies to serious cases where hatred or violence are involved. Furthermore, the Russian authorities did not implement the recommendation that the law should also specify clearly the criteria to be met when declaring any material extremist.³¹⁴

In terms of punishment, the Criminal Code and the Code of Administrative Offenses have been amended to include crimes that are extremist.³¹⁵ In the recently adopted national security Yarovaya Law on June 24, 2016, the punishment for extremism crimes was raised to four to eight years.³¹⁶ Those accused of crimes under the 2002 Extremism Law include opposition politicians, journalists, bloggers, and human rights defenders, as the Law on Extremism can be applied to individuals, organizations, and mass media. Individuals charged with extremism may be subject

312. Russian Criminal Code, Article 63 & 282

313. Some of the activities as translated from the Law on Extremism by the US library of Congress: forcible change of the foundations of the constitutional system and violation of integrity of the Russian Federation; public justification of terrorism and other terrorist activity; incitement of social, racial, ethnic or religious hatred; propaganda of exclusiveness, superiority or inferiority of an individual based on his/her social, racial, ethnic, religious or linguistic identity, or his/her attitude to religion; violation of rights, liberties and legitimate interests of an individual because of his/her social, racial, ethnic, religious or linguistic identity or attitude to religion; preventing citizens from exercising their electoral rights and the right to participate in a referendum, or violating the secrecy of the vote, combined with violence or threats to use violence; preventing legitimate activities of government authorities, local self-government, election commissions, public and religious associations or other organizations, combined with violence or threats to use violence; committing crimes involving the aggravating factors listed in article 63(1) of the Criminal Code (e.g., repeated crimes, crimes committed by an organized group, or crimes with severe consequences); propaganda and public demonstration of Nazi attributes or symbols, or attributes and symbols similar to them or public demonstration of attributes or symbols of extremist organizations; mass distribution of materials known to be extremist, their production and possession for the purposes of distribution; dissemination of knowingly false accusations against federal or regional officials in their official capacity, alleging that they have committed illegal or criminal acts; [and] organization and preparation of extremist acts, and calls to commit them; and financing the above-mentioned acts or providing any other material support to an extremist organization, including assistance in printing their materials, offering educational or technical facilities, or providing communications or information services: Legal Provisions on Fighting Extremism: Russia, Library of Congress, https://www.loc.gov/law/help/fighting-extremism/russia.php#_ftn13

314. ECRI Conclusions on the Implementation of the Recommendations in Respect of the Russian Federation Subject to Interim Follow up” <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Russia/RUS-IFU-IV-2016-026-ENG.pdf>

315. Please refer to sections IV and V for details regarding the legal provisions in the Criminal Code and Code of Administrative offenses that define extremist crimes.

316. “Yarovaya Law. The Death Of The Russian Constitution.” http://www.huffingtonpost.com/evgeniya-melnikova/yarovaya-law-the-death-of_b_10864882.html

to imprisonment, forced labor, or a fine whereas organizations charged with extremism can be liquidated. This legislation and its subsequent amendments have created a legal foundation for the prosecution of religious groups, which has been historically directed at Muslim groups.

According to official government statistics, since 2009 at least 2592 people were found guilty on 6 anti-extremist articles of the Criminal Code of the Russian Federation (148(1), 205.2, 280, 280.1, 282 and 354.1). After 2015, the risk of real imprisonment sentences increased dramatically and more than 50 people have been put into jail to serve sentences from a few months to at most, five years just for online activities which were identified as “extremism.” The most sensitive topics that are deemed to be “extremist” concern the annexation of Crimea and Russian-Ukrainian conflict, role of Russian Orthodox Church, religious issues related to the Islamic State, and ultimately, criticism of the authorities.

The first individual found guilty of “extremism” was Rafis Kashapov, in 2015, who was the head of the Tatar Public Center from Tatarstan. He was found guilty of separatism, synonymous in practice with terrorism and extremism, and was sentenced to 3 years in prison under the new article for publishing, in Vkontakte, six articles about violations of the human rights of the Crimean Tatars and declaring the annexation of Crimea by Russia illegal. Criticizing Vladimir Putin’s foreign policy, Kashapov compared Russia’s actions in Donetsk to the Nazification of Danzig. National courts referred to using words ‘occupation’ and ‘annexation’ as the evidence of his guilt.

Following Russia’s involvement in Syria in September 2015, there was an increase in the number of criminal cases on incitement charges such as public calls for the commission of terrorist activity or public justification of terrorism (Article 205.2 of the Criminal Code of the Russian Federation).

For example, in Tyumen, journalist and blogger Alexei Kungurov was sentenced under Article 205.2 to two years’ imprisonment in a settlement colony for publishing in his LiveJournal blog a post entitled ‘Who are the real targets of the air strikes of Putin’s falcons’, in which he sharply criticized the actions of the Russian armed forces in Syria. Incidentally, several weeks before Kungurov was imprisoned, Anton Nosik was sentenced in Moscow for his publications on Syria, having been found guilty under Article 282 of the Criminal Code (incitement of enmity on the basis of nationality). Unlike Kungurov, Nosik emotionally and emphatically endorsed Russia’s actions in the Middle East, appealing that ‘Syria must be wiped off the face of the earth’ and was only fined.

Despite the Supreme Court recommendations issued in 2011, the practice of charging people for incitement of hatred to ‘government officials’, ‘police officers’ and other such social groups is being re-adopted in this framework of incitement and extremism. For example, in Vologda, a member of the opposition Progress Party, Evgeny Domozhirov, was charged with the “abusement

of the dignity of the social group of ‘police officers.’ because he had posted on his personal blog, a strongly worded reaction to the Vologda police who searched his home and was physically rough with his mother during the search.

Furthermore, on April 20, 2017 the Supreme Court of the Russian Federation banned the major Jehovah’s Witnesses organization in Russia and its 395 regional branches on anti-extremism grounds. Since, members of the organization have face criminal charges with participation in the organization banned for extremism such as Danish National, Dennis Christensen. On May 26, 2017, Christensen was detained in the city of Oryol by FSB agents and now is being held in the detention centre facing 10 years in prison.³¹⁷

Russia’s anti-extremist legislation focuses on crimes that are “ideological” in nature and the fight against ideology or incitement is what Russia is currently promoting as their comparative strength in countering terrorism at the international level at the UN. In the fall of 2016, following the adoption of the Yarovaya Law, Russia sought to engage more in criminalizing incitement to terrorist acts by proposing a new draft resolution on October 3rd, that would supplement resolution 1624 (2014).³¹⁸ It was reported that the draft resolution would prohibit “terrorist propaganda” and is “aimed at countering terrorist ideology and violent extremist ideology,” which has increasingly become important for Russia in its Yarovaya laws and increasing moves to crack down on dissenting voices and ideologies in the name of terrorism and extremism. However, the draft resolution has not moved from the draft as other states had issues with the draft. However, this proposed draft resolution signals that Russia is proactive in creating international legal tools that would broaden the fight against terrorism and ‘extremism’ to focus on vague notions of ideology.

Ultimately, The case of Russia illustrates the dangers of the international community rallying behind the notion of “extremism” which is a broad and blunt tool for silencing individuals and organizations whose operations or publications are vaguely deemed extremist by the state.

TUNISIA

Tunisia adopted a National Strategy against Extremism and Counter Terrorism in 2016. The coordination of the strategy rests within the Ministry of Foreign affairs on the justification that the threat of terrorism not only concerns Tunisia but is a global threat and requires collaboration with international experts such as the UN. The Strategy consists of four pillars: Prevention, Protection, Prosecution, and Response. Each of these pillars relate to cross-

317. “Dennis Kristensen: Special Project”<https://memohrc.org/special-projects/dennis-kristensen>

318. This was detailed in an AP article by Edith Lederer. <http://bigstory.ap.org/article/14c46049eaff4e9f9d2c9b6e6c5e358f/russia-wants-new-un-resolution-ban-extremist-propaganda>

cutting themes of: deradicalization, police and intelligence, financing of terrorism, border control, cyber-space, foreign fighters, justice, and international cooperation. Pillar IV or “response” pertains to victims of terrorism, role of protected witnesses, and rights of detainees.

In November 2015, CTED with ICCT and Human Security Collective organized a national workshop on the effective implementation of Resolutions 1624 and 2178 and violent extremism.³¹⁹ CTED pledged to continue to provide advice and facilitate technical assistance from donor states and international organizations.³²⁰ At this session they discussed how there should be a long-term investment towards equal partnerships with civil society for trust-building. It was noted that the discussants pointed out the need to “distinguish reliable civil society partners from spoiler organizations.” From January 19-21, 2016, Tunisian civil society was invited for the first time to discuss the recent counter-terrorism legislation at a national seminar titled “Implementation and application of the new counter-terrorism legislation in Tunisia: ensuring effectiveness while respecting the rule of law and human rights,” with over 70 officials from Tunisian institutions and international experts, including CTED.

At this time, it is premature to evaluate the full effectiveness of the Tunisian National Strategy or its human rights implications, especially since the National Strategy has not been made public yet, despite repeated calls to do so from civil society.³²¹

Since the uprising in Tunisia in 2011, Tunisia has faced increasing terrorist threats that warrant an effective counter-terrorism strategy. Recently, the Tunisian authorities extended a state of emergency that was adopted in 2015 following Da’esh’s attacks on the country. However, the Tunisian authorities use of its counter-terrorism framework and emergency laws have facilitated gross human rights violations at the hands of the Tunisian forces. In that respect, it is worth mentioning that Draft Law No. 25-2015 on the Prosecution of Abuses Against the Armed Forces is being rediscussed by the Tunisian Parliament since July 2017. In order for Tunisia to effectively counter terrorism and prevent “violent extremism” as when conducive to terrorism, all efforts must provide justice and reparation to victims of violations committed in this framework. This should be coupled with efforts to ensure that the National Strategy can ameliorate the human rights shortcomings of Tunisia’s security framework in order to successfully move Tunisia forward.

319. Workshop Report: National Workshop on Effective Implementation of Security Council Resolution 1624 (2005) and 2178 (2014): Tunis, Tunisia, 3 - 4 November 2015 http://www.hscollective.org/wp-content/uploads/2016/01/Report_National-Workshop-on-Effective-Implementation-of-Security-Council-Resolution-1624-and-2178_Tunisia_Nov2015.pdf

320. CTED facilitates national workshop on countering incitement and violent extremism in Tunisia <https://www.un.org/sc/ctc/blog/2015/11/18/cted-facilitates-national-workshop-on-countering-incitement-and-violent-extremism-in-tunisia/>

321. “FIDH urges authorities to place human rights at the heart of its response to terrorism” <https://www.fidh.org/fr/regions/maghreb-moyen-orient/tunisie/la-fidh-enjoint-les-autorites-a-inscrire-les-droits-humains-au-coeur>

UNITED STATES

The Obama administration pioneered the development of domestic CVE programs after releasing the initial White House Strategy for Empowering Local Partners to Prevent Violent Extremism in the United States in 2011 which was replaced by the most recent 2016 White House Strategic Implementation Plan for Empowering Local Partners to Prevent Violent Extremism in the United States.

The reasoning behind this shift was to create new strategies for countering terrorism as military action alone is insufficient³²² Other countries subsequently began to enact countering violent extremism conferences in Singapore, Norway, Turkey, Kazakhstan, Australia, Kenya, and Mauritania. Finally, during the 70th session of the UN General Assembly, Obama convened a summit to build on his call of action. This catalyzed action within the UN that resulted in the Secretary General's Plan of Action to Prevent Violent Extremism in 2016.

The United States' strategy to counter violent extremism is organized in different federal bodies, but united by the 2016 Department of Homeland Security's CVE Strategy which is updated every three years, with the next update in 2019. The Strategy is guided by the following "principles":

- Violent extremists have many motivations and are not limited to any single population, region, or ideology;
- Local community partners are most effective at safeguarding individuals in the United States against violent extremist radicalization and recruitment to violence;
- Intelligence and law enforcement investigations are not part of CVE activities; and
- Preservation of individual liberty, fairness, and equality under the law and respect for civil rights, civil liberties, and privacy are fundamental to CVE.³²³

Structurally, CVE activities are organized through an inter-agency CVE task force, established in 2016, led by The Department of Homeland Security (DHS) and the Department of Justice (DOJ). In addition, the Task Force also includes experts from the the Federal Bureau of Investigation (FBI) and the National Counter-Terrorism Centre (NCTC).³²⁴ The Office of Community Partnerships (OCP) within the Dept of Homeland Security (DHS) Office of Policy conducts grant giving, field support, tech sector engagement, and works with the Office for Civil Rights and Civil Liberties. In

322. Why Counter-terrorism Needs Countering Violent Extremism (CVE): How Human Rights and Good Governance Help Prevent Terrorism <https://2009-2017.state.gov/j/remarks/247214.htm>

323. Pg 2 Department of Homeland Security Strategy for Countering Violent Extremism https://www.dhs.gov/sites/default/files/publications/16_1028_S1_CVE_strategy.pdf

324. Department of Homeland Security "Countering Violent Extremism Task Force" <https://www.dhs.gov/cve/task-force>

August 2016, the DHS announced \$10 million in funding for NGOs to carry out violent extremism programs.³²⁵ Similarly for the Fiscal Year 2017, \$17.4 million was requested for CVE programs in the Department of Justice.³²⁶ However, the budget proposed by the Trump administration, still up for congressional approval at time of writing, completely defunds the CVE task force within the DHS.³²⁷ The previous funding demonstrates the amount of resources that have been mobilized in the US under the notion of Countering Violent Extremism, but also the Trump administration's lack of prioritizing working with communities and civil society in preventing terrorism.



Obama addressing the general assembly 20 September 2016
UN Photo/Manuel Elias

Alongside the coordinated efforts of the DHS and the DOJ, the State Department has also taken up counter violent extremism with the creation of Global Engagement Center to replace the Center for Strategic Counter-terrorism Communications. The Center is guided by the idea that any long-term strategy to counter violent extremism cannot focus solely on military action and rather aims to be an “innovative organisation” to counter ISIL messaging “to expose ISIL’s true nature.” Similarly the Center claims to “leverage the entirety of the U.S. Government to confront ISIL and other extremists in the information space and bring coordination and synchronization to those efforts,” and “enhance the capacities and empower third party messengers... [including] NGOs.”³²⁸ The State Department has also developed a joint strategy in 2011 with the United States Agency for International Development (USAID) to countering violent extremism in different programs across Africa and the Middle East.³²⁹

325. Department of Homeland Security: FY 2016 Countering Violent Extremism (CVE) Grant Program <https://www.dhs.gov/cvegrants>

326. US Department of Justice, FY 2017 Budget Request, National Security <https://www.justice.gov/jmd/file/822376/download>

327. Reuters, “White House budget slashes ‘countering violent extremism’ grants” <http://www.reuters.com/article/us-usa-budget-extremism-idUSKBN18J2HJ>

328. Global Engagement Center: <https://www.state.gov/r/gec/>

329. State Department Countering Violent Extremism: <https://www.usaid.gov/countering-violent-extremism>

Understanding how CVE works in practice has been non transparent. In an effort to understand what programs are conducted by the government to countering violent extremism, the Brennan Center for Justice at NYU School of Law³³⁰ and the American Civil Liberties Union (ACLU)³³¹ have sued DHS and the DOJ under the Freedom of Information Act to uncover records relating to the CVE program. Domestically, both organizations have evaluated federal initiatives including their CVE pilot programs in Massachusetts, Maryland, California, Minnesota, and digital programs with private sector partners such as Facebook, Google and Twitter.³³² For example, the FBI created a CVE program for schools titled “Preventing Violent Extremism in Schools” that assumes that there is a trajectory to radicalization whether through the “consumption of violent propaganda”³³³ or by “vast social networks.” The program does state that “The FBI does not advocate the application of any psychological or demographic ‘profiles’ or checklists of indicators to identify students on a pathway to radicalization”. However the FBI does encourage schools to state interventions for students with concerning behavior.³³⁴ This program together with the recent FBI CVE website “Don’t Be a Puppet”³³⁵ have garnered criticism from the American Muslim community and national civil rights organizations for potentially encouraging individuals to report those who travel to countries with Muslim holy sites. It is unclear how many schools have implemented the FBI’s program, but the program serves as an example of how CVE programs are not evidenced-based and might primarily target Muslim Americans.

Despite the lack of transparency surrounding the activities and impact of CVE programs, it is clear that CVE program’s primary interests is to work with American Muslim communities in order to identify those that they suspect of being involved in terrorism. Despite the fact that the DHS CVE strategy first stipulates that “Violent extremists have many motivations and are not limited to a single population, region or ideology,”³³⁶ President Trump’s administration has illustrated the true nature of CVE programming. It was reported that the Trump administration wanted to change the CVE program to be “Countering Islamic Extremism” or “Countering Radical Islamic Extremism.”³³⁷ In this vein, the programs would not longer target white supremacists for example. This name change would not alter the existing motivations of the program, which already cast suspicion and target American Muslims. However, the recent removal of the director of the Office of Community

330. “Brennan Center Files Suit to Making “Countering Violent Extremism” Records Public. <https://www.brennancenter.org/press-release/brennan-center-files-suit-make-countering-violent-extremism-records-public> For the documents that were acquired from the Freedom of Information Act requests see: <https://www.brennancenter.org/analysis/countering-violent-extremism-reference-documents>

331. ACLU V. Department of Homeland Security: FOIA Lawsuit Seeking Records on “Countering Violent Extremism” Programs <https://www.aclu.org/cases/aclu-v-department-homeland-security-foia-lawsuit-seeking-records-countering-violent-extremism> Similar to the Brennan Center, the ACLU operates a Freedom of Information Act Database of CVE documents: <https://www.aclu.org/foia-collection/cve-foia-documents>

332. For more information regarding US based CVE programs and their human rights impacts please refer to the Brennan Center’s report “Countering Violent Extremism” by Faiza Patel & Meghan Koushik

333. Pg 10 Preventing Violent Extremism in Schools, FBI, January 2016, <https://info.publicintelligence.net/FBI-PreventingExtremismSchools.pdf>

334. Pg 15 Ibid.

335. Don’t Be a Puppet: FBI <https://cve.fbi.gov/home.html>

336. Pg 2 Department of Homeland Security Strategy for Countering Violent Extremism https://www.dhs.gov/sites/default/files/publications/16_1028_S1_CVE_strategy.pdf

337. “Trump to focus counter-extremism program solely on Islam- Sources” <http://www.reuters.com/article/us-usa-trump-extremists-program-exclusiv-idUSKBN15G5VO>

Partnerships in the Department of Homeland Security who also serves as the leader of the CVE Task Force that was responsible for community partnerships with Muslims, signals that the current US administration is breaking down cooperation with Muslim communities by eliminating the one government official communities can address concerns within the development of CVE programming.³³⁸

Furthermore, many of the CVE grants have been granted to police departments across the country. This is even more troubling given President Trump's remarks about using excessive force during arrests, effectively condoning police brutality.³³⁹ FIDH member organization, the Center for Constitutional Rights (CCR) lead the case of Hassan V. City of New York to challenge the New York Police department's unlawful surveillance of Muslims Americans. CCR states that "There is no dispute that the NYPD's goal under this program – both ambitious and chilling – was to create a human mapping system that monitored Muslims all along the Eastern Seaboard and beyond. No Muslim individual or entity appears to have been beyond suspicion. " It was revealed from internal NYPD documents that the program had in fact lead to zero leads regarding terrorist activity, but had succeeded in saturating "almost every aspect of Muslim life." For example, one of CCR's clients Zimah Abdur-Rahim was under surveillance by the NYPD because of the school she operated for Muslim girls, but the recorded details of her surveillance focused on the fact that it was run from her home and that students were mostly African-American. Similar to the FBI's "Not a Puppet" program that asked viewers to report those talking about travel to "places that sound suspicious", the NYPD surveillance documents demonstrated that they listed "28 ancestries of interest" that warrant suspicion. The case was filed on June 6, 2012 and is currently in pre-trial litigation. According to CCR, the Third Circuit Court of Appeals "issued a strong opinion in [our] client's favor that reversed and remanded the case back to the district court."³⁴⁰

Before leaving the White House, the Obama administration granted \$10 million to 31 organizations, however currently 4 of those organizations have rejected the funding they have been offered totaling more than \$2 million³⁴¹ The Claremont School of Theology who was to receive a donation of \$800,000, the second largest grant the DHS allocated, stated that "We have and will continue to work with our government where there is no conflict of interest, but given the anti-Muslim actions of the current executive branch, we cannot in good conscience accept this grant."³⁴² Similarly, a Somali youth development organization rejected \$499,998 in funding, stating that "

338. Beinart, Peter: "The U.S. Government's Fight Against Violent Extremism Loses Its Leader" <https://www.theatlantic.com/politics/archive/2017/07/a-breaking-point-for-muslim-representation/535428/>

339. Berman, Mark: "Trump tells police not to worry about injuring suspects during arrests" https://www.washingtonpost.com/news/post-nation/wp/2017/07/28/trump-tells-police-not-to-worry-about-injuring-suspects-during-arrests/?utm_term=.8351943944a5

340. Center for Constitutional Rights Hassan V. City of New York. <https://ccrjustice.org/home/what-we-do/our-cases/hassan-v-city-new-york>

341. The amount rejected totaled \$2,169,583 from four organizations: Ka Joog Nonprofit Organization of Minneapolis (\$499,998), Leaders Advancing and Helping Communities of Dearborn, Michigan (\$500,000), Unity Productions Foundation -Nationwide (\$396,585) and the Claremont School of Theology of Los Angeles (\$800,000)

342. Bayan Claremont Declines \$800,000 Federal Grant - February 10, 2017 <http://www.bayanclaremont.org/dhsgrant/>

As Minnesotans, we are deeply troubled by our nation's new administration and their policies which promote hate, fear, uncertainty and even worse; an unofficial war on Muslim-Americans and Immigrants."³⁴³ The rejection of funds from NGOs who were selected to partake in CVE programming with the DHS demonstrate how well intentioned violent extremism programming can shift in rhetoric and focus, depending on leadership.

The Trump administration has signaled a shift to focus more on kinetic counter-terrorism strategies, which one might assume would potentially mean completely dismissing CVE's softer community-based approach. However, the Trump administration has conceptualized that terrorist threats are solely beyond the borders of its homeland, as demonstrated by the fact that it requested more CVE funding for its State Department and USAID programs, totaling over \$229 million³⁴⁴ while proposing to defund the CVE task force in the DHS.³⁴⁵³⁴⁶

Under the Trump Administration, the DHS reviewed the organizations selected for CVE grants and decided to defund the one organization on the list that targeted white supremacy, Life After Hate. Given the recent terrorist attack by a white supremacist who drove a car into a crowd of anti-racists protesters on August 12, 2017 in Charlottesville, VA, and President Trump's lack of denouncement of white supremacy groups following the attack, the current US administration turns a blind eye to terrorism committed by white supremacists. According to the Combatting Terrorism Center at West Point, violent attacks by far-right actors is rising from a yearly average of 70 attacks in the 1990s to a yearly average of more than 300 since 2001.³⁴⁷ The Trump administration's narrow approach to "extremism" is dangerous for the entire United States as it does not effectively address the domestic terror threat.

The lack of information regarding CVE programs coupled with the fact that the program instrumentalizes communities by treating them as potential intelligence informants and targets Muslim Americans shows that the Trump administration has a blunt, secretive, and powerful tool into Muslim communities across the country and seeks to further alienate Muslim communities without effectively addressing the threat posed by far-right groups.. The future of the CVE agenda in the Trump administration is constantly shifting, but ultimately, we must critically re-evaluate the merits of the CVE agenda in the US and the impact of the PVE agenda at the international level.

343. Public statement from Ka Joog disseminated on Facebook. <https://facebook.com/kajoog.org/posts/1561873447164107>

344. Congressional Budget Justification, Foreign Assistance, Supplementary Tables, Fiscal Year 2018, <https://www.state.gov/documents/organization/271014.pdf>

345. DHS Countering Violent Extremism Grants <https://www.dhs.gov/cvegrants>

346. The requested budget did not change the Overseas Contingency Operations (OCO) funding for CVE programs, but the request did decrease the budget for the State Department's Bureau of Counter-terrorism and Countering Violent Extremism (CT/CVE) by \$1.4 million below the 2017 fiscal year estimate. Pg 97 & 145, Congressional Budget Justification Department of State, Foreign Operations, and Related Programs <https://www.state.gov/documents/organization/271013.pdf>

347. Pg 87: Perliger, Arie, "Challengers from the Sidelines -Understanding America's Violent Far-Right" Combating Terrorism Center at West Point available here: <https://info.publicintelligence.net/CTC-ViolentFarRight.pdf>

MALI

Currently, Mali does not have a definition or legal framework that criminalizes extremism or extremist acts but, Mali is a donor recipient country from the funding arm of the Global Counter-Terrorism Forum (GCTF), to develop a PVE national strategy and create localized counter violent extremism responses.³⁴⁸

It is clear at this stage what steps have been taken to develop a national PVE strategy and how this PVE work is coordinated with civil society and organized by the UN with a commitment to human rights. The danger is that a newly developed PVE national strategy could expand the scope of Mali's counter-terrorism strategy to focus on undefined "extremism" that can create an unchecked space for human rights abuses.

It is critical that PVE programs supporting community level development or human rights activities, under the label of "preventing violent extremism," ensure that communities are not viewed or used as intelligence informants which would potentially puts communities at a risk of reprisals by terrorist groups for supporting counter-terrorism efforts of the state. This would contradict the ultimate goals of countering terrorism by severing the trust between communities and the state.

Mali has been selected for two pilot PVE programs: one to develop a National Strategy to Preventing Violent Extremism with the United Nations and a program to support local CVE programming from the funding arm of the Global Counter-terrorism Forum.³⁴⁹ In the most recent report of the Secretary General on the Situation in Mali, it was reported that MINUSMA and UNDP continued their joint support for the "development of a national strategy for the prevention of violent extremism and countering terrorism."³⁵⁰ This was also underscored in a 2015 Security Council Presidential Statement that called on CTITF entities to "support Sahel countries efforts to counter terrorism and address conditions conducive to the spread of violent extremism which can be conducive to terrorism."³⁵¹ There has been limited public information regarding the progress of this program outside of an initial program outline, that stipulates the program is a four year UNDP initiative, costing \$45.7, that focuses on Kenya, Mali, Nigeria, Somalia, Cameroon, and Chad.³⁵² As

348. The Global Counter-Terrorism Forum convenes 29 states and the European Union with the aim of reducing the vulnerability of people to terrorism globally. It was initially launched in 2011 in New York as a way to catalyze the implementation of the UN Global Counter-Terrorism Strategy and now the Plan of Action to Prevent Violent Extremism. The United States has been heavily involved in convening the GCTF. Organizationally, member states co-chair six working groups focused on Criminal Justice and the Rule of Law; Countering Violent Extremism; Foreign Terrorist Fighters; and Detention and Reintegration and in two key regions of the Sahel and the Horn of Africa.

349. For more information regarding the Global Counter-Terrorism Forum please refer to previous footnote.

350. Report of the Secretary-General on the situation in Mali 30 March 2017, S/2017/271

351. The PRST stated that "The Security Council takes note of the adoption of a Declaration of the G5 Sahel countries on the Fight against Radicalization and Violent Extremism in the Sahel. The Security Council requests the United Nations Counter-terrorism Implementation Task Force (CTITF) and its member entities, including the Counter Terrorism Committee Executive Directorate as well as the United Nations Counter-Terrorism Centre, to support Sahel countries efforts to counter terrorism and address conditions conducive to the spread of violent extremism which can be conducive to terrorism." S/PRST/2015/24

352. "UNDP Africa launches initiative to help prevent and respond to violent extremism" <http://www.undp.org/content/undp/en/home/>

of January 2017, this program budget has nearly doubled to \$81.2 million.³⁵³ It was finally reported that the program budget would be \$108 million to encompass countries beyond Africa,³⁵⁴ as laid out in the Secretary General's Report to propose the creation of the Office of Counter-Terrorism.³⁵⁵

The initially proposed program claimed that in the process of developing the national strategy, actors "[would] work closely with civil society in all target countries as appropriate." FIDH member organization, Association malienne des droits de l'Homme (AMDH) has reported a lack of visibility of the strategy and has not been involved at any stage of its development.³⁵⁶ Civil Society organizations, such as AMDH, who continuously document the human rights situation in Mali, should be involved to ensure that counter-terrorism measures are taken in compliance with human rights and in consultation with communities in context of PVE programming.



Peacekeeper Stands Guard as Head of MINUSMA Visits Kidal Following Fatal Attack in Mali 13 February 2016
UN Photo/Marco Dormino

We deplore that the UNDP program proposal barely mentions human rights are, thus signalling that they are not a guiding principle in this initiative.³⁵⁷ This is a contradiction to the Plan of Action to Prevent Violent Extremism, put forth by the former UN Secretary General, which stipulated that Pillar IV of the GCTS (Ensuring the Protection and Promotion of Human Rights) was a guiding principle in developing PVE programs. Similarly, human rights concerns in counter-terrorism in the UN are typically only discussed in the context of PVE. The protection and promotion of the human

[presscenter/pressreleases/2015/11/23/undp-africa-launches-initiative-to-help-prevent-and-respond-to-violent-extremism-.html](http://www.un.org/presscenter/pressreleases/2015/11/23/undp-africa-launches-initiative-to-help-prevent-and-respond-to-violent-extremism-.html)

353. Ibid, as amended in first press release.

354. UNDP: Development solutions to prevent violent extremism <http://www.undp.org/content/undp/en/home/ourwork/democratic-governance-and-peacebuilding/conflict-prevention-and-peacebuilding/preventing-violent-extremism.html> At the time of writing, the only available program information was for Africa and not for "Arab States, Asia, Europe and CIS."

355. Page 9, Capability of the United Nations System to Assist member State in Implementing the United Nations Global Counter-Terrorism Strategy, A/71/858

356. Page 10, UNDP asserts itself to be the lead entity on this program due to its network of 120 regional experts, established networks and partnerships with government and civil society, and its "impartiality makes it a unique operator in an extremely delicate and politically-sensitive area of work." Please refer to the pdf version of the proposal. <http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2015/11/23/undp-africa-launches-initiative-to-help-prevent-and-respond-to-violent-extremism-.html>

357. The mentions of human rights are with regards to UNDP's strategic plan for 2014-2017 to strengthen support for human rights (Page 7), and in the Risks and Mitigation portion of the strategy it identified "regular human rights monitoring with clear 'red lines' articulated in project documents as a risk of the lack of political will to balance the rule of law with justice and development programs.

rights of Malians must be inherently valued and upheld, not co-opted as a means solely to “prevent violent extremism.” Furthermore, the only publicly available information regarding the Malian national strategy noted that in June 2016, The Ministry of Foreign Affairs, International Cooperation and African Integration organized a conference for three days focused on the development of a national strategy focused on preventing and the fight against violent extremism.³⁵⁸ The recent report of the SG on the threat posed by ISIL (Da’esh) noted that the UNCCT was supporting the development of the strategy with MINUSMA. Additional information and clarity around the development of this strategy should be made public and additional steps should be taken to work closely with civil society partners, particularly human rights organizations.

In addition, our organizations observe that local elected officials and individuals perceived as cooperating with the Malian army or the international forces are also subject to reprisals by terrorist or armed groups, which can be observed through the multiple assassinations of mayors and prominent members of the community, and many cases of threats and intimidation. As PVE programming encourages community based action, in theory, those involved in PVE programming could be identified as persons helping in the fight against terrorism, and thus subject to the same threats.

Mali was also selected as an initial pilot for a CVE program in 2015 from the Core Funding Mechanism of the Global Community Engagement and Resilience Fund (GCERF), a funding arm of the Global Counter-Terrorism Forum (GCTF) based in Geneva.³⁵⁹ The program emphasizes stability for local organizations, supporting CVE programs, and aims to convene different stakeholders to provide expertise and develop localized CVE responses. There has been no update on this program, how it is being implemented, including with civil society partners, and whether the development of this CVE programming prioritizes human rights. The PVE efforts conducted by both the UN and GCERF lack publicly available information ; they also lack details on civil society cooperation and the promotion and protection of human rights in each activity.

The UN Plan of Action to Prevent Violent Extremism recommends that National Action plans should “fortify the social compact against violent extremism” in addition to providing a “legislative foundation for national plans of action.” Mali’s current legislative foundation focuses on the fight against terrorism, but unlike the UN Global Counter-Terrorism Strategy does not make specific references to “violent extremism,” or the focus on “extremist ideologies” as laid out in the UN’s PVE Plan of Action.³⁶⁰ In current Malian policies, the focus has been strictly focusing on combating

358. “Extrémisme violent et le terrorisme au Mali : Une stratégie nationale en cours d’élaboration pour éradiquer le fléau”<http://www.maliweb.net/la-situation-politique-et-securitaire-au-nord/extremisme-violent-terrorisme-mali-strategie-nationale-cours-delaboration-eradiquer-fleau-1658052.html>

359. “Core Funding Mechanism” <http://www.gcerf.org/grants/core-funding-mechanism/>

360. Paragraph 36. Violent extremist groups cynically distort and exploit religious beliefs, ethnic differences and political ideologies to legitimize their actions, establish their claim on territory and recruit followers. Distortion and misuse of religion are utilized to divide nations, cultures and people, undermining our humanity. Faith and community leaders are critical in mentoring vulnerable followers so as to enable them to reject violent ideologies and in providing opportunities for intra- and interfaith dialogue and discussion as a means of promoting

terrorism without expanding the focus to undefined “extremism” or “extremist ideology” as pursued by other states and enshrined in the UN’s new Comprehensive International Framework to Counter Terrorist Narratives adopted in Resolution 2354 (2017). For example in the National Policy of Transitional Justice and the 2015 Peace agreement, there is no reference to “violent extremism” or “delegitimizing extremist ideologies.”

“Religious extremism” was finally mentioned in the final document of the “Conference d’entente nationale,” which took place this year, in 2017,³⁶¹ as one of the underlying causes of the various crises in Mali. However, it is positive that Mali has not instituted a legislative framework aimed at countering “ideologies” or moved to criminalize extremist acts as a separate offense. The UN’s efforts to develop a PVE National Strategy with Mali should maintain the existing strict focus on countering terrorism instead of widening the scope to focusing on undefined “extremist ideologies,” which encourage counter-terrorism operations based on perceived thoughts and associations that can create space for additional human rights abuses.

It is crucial that the UN’s efforts to prevent violent extremism work with local Malian civil society who have a better understanding of the underlying dynamics that fuel terrorist violence. In addition any PVE programming developed must also ensure that any potential PVE efforts, that are focused on working directly with communities, do not stigmatize sections of the Malian population who are at risk of reprisals for suspected cooperation with national authorities on counter-terrorism. Similarly, they must ensure that any state actions taken in the name of preventing violent extremism do not violate fundamental freedoms. AMDH’s extensive work³⁶² demonstrates that the roots of terrorism in Mali are underlined by a number of factors related to the lack of enjoyment of human rights, notably economic and social rights.³⁶³ Moving forward, it is instrumental that civil society, including AMDH is viewed as a partner in developing effecting counter-terrorism responses that are grounded in a human rights approach.

Up to date, FIDH and AMDH have not observed any real impact of the UN’s program to develop a national PVE strategy. This is demonstrated by the fact that the north of the country remains in a situation characterized by State vacuum, socio-economic underdevelopment, and a high level of insecurity and violence, which is moving quickly to the centre of the country without due attention.

tolerance, understanding and reconciliation between communities. A/70/674

361. In original text: “l’émergence du terrorisme, de l’extrémisme religieux et des trafics de tous genres” - CEN document “ République du Mali: Un Peuple - Un But - Une Foi”

362. FIDH and AMDH “Terrorism and Impunity Jeopardize the Fragile Peace Agreement: Joint Position Paper”https://www.fidh.org/IMG/pdf/note_mali_mai_2017_en_web-2.pdf

363. For example, some factors are due to a lack of state capacity, such as poverty and a lack of opportunity for young people due to the disengagement of the state and closing of schools and the need to ensure the security for one’s family and goods because the State is not able to ensure the security of its population.

3. UN REGIONAL COOPERATION: THE (BAD) EXAMPLE OF THE SHANGHAI COOPERATION ORGANIZATION (SCO)

The United Nations participates in various counter-terrorism regional cooperations through the CTITF Working Group of National and Regional Counter-Terrorism Strategies. In that regard, FIDH and its member organizations are most concerned with the UN's cooperation with the Shanghai Cooperation Organization (SCO), the world's largest regional organization in terms of population³⁶⁴ whose counter-terrorism framework and practices have the ability to affect of the world's population, and through its influence at the United Nations has the ability to affect the human rights afforded to people across the globe.

The SCO was founded in June 2001 by China (Permanent Member of the UNSC), Russia (Permanent Member of the UNSC), Kazakhstan (currently elected member of the Security Council), Kyrgyzstan, Tajikistan, and Uzbekistan, for the primary purpose to fight the "three evils" of "Terrorism, Extremism and Separatism."³⁶⁵³⁶⁶ In June 2017, India and Pakistan also became full members of the SCO. Today, there are additionally four other observer states and six dialogue partners.³⁶⁷ Observer States include, Iran, Mongolia, Afghanistan, and Belarus, and dialogue partners include, Turkey, Azerbaijan, Armenia, Cambodia, Nepal, and Sri Lanka .

The SCO is principally organized into two organs, the SCO secretariat and the SCO Regional Anti-Terrorist Structure (RATS) that is responsible for implementing the SCO's counter-terrorism activities and strategies. RATS is based in Tashkent, Uzbekistan and conducts coordinating activities³⁶⁸ among SCO states including: special operations, information collection, collection of

364. The Shanghai Cooperation Organisation, Briefing European Parliamentary Research Service, June 2015. [http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/564368/EPRS_BRI\(2015\)564368_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/564368/EPRS_BRI(2015)564368_EN.pdf)

365. Shanghai Cooperation organization Charter: en.sco-russia.ru/load/1013181846

366. The SCO was founded to consolidate cooperation on peace and security issues, the SCO was founded with the goal of "joint[ly] combating terrorism, separatism and extremism in all their manifestation, fighting against illicit narcotics and arms trafficking and other types of transnational criminal activity." -SCO Charter. This commitment is demonstrated within the operational organization of SCO that is run by a supreme decision-making body of the "Heads of State Council" but specifically established the Regional Anti-Terrorist Structure (RATS) that is lead by Yevgeny Sergeyevich Sysoyev of the Russian Federation.

367. Six Observer States: Islamic Republic of Afghanistan, Republic of Belarus, Republic of India, Islamic Republic of Iran, Republic of Mongolia, Islamic Republic of Pakistan Six Dialogue Partners: Republic of Azerbaijan, Republic of Armenia, Kingdom of Cambodia, Federal Democratic Republic of Nepal, Republic of Turkey, Democratic Socialist Republic of Sri Lanka.

368. At the High -Level event titled "United Nations and Shanghai Cooperation Organization: Jointly Countering Challenges and Threats",

database of terrorist, extremist, and separatist organizations and individuals.³⁶⁹³⁷⁰ According to the Shanghai Convention³⁷¹ and the 2009 SCO Convention on Counter-Terrorism, the SCO members must conduct a variety of different counter-terrorism measures :

- Extraditions, returns, and denial of asylum for those who are suspected of the three evils of terrorism, separatism, extremism
- Collection and exchange of intelligence through the RATS database with a blacklist of individuals identified as linked to terrorism, separatism, extremism
- Joint military and law enforcement exercises³⁷²

These activities also form the basis for states to target dissenting voices and crack down on civil unrest particularly in ethnic regions. In its 2012 report “The Shanghai Cooperation Organisation (SCO): A Vehicle for Human Rights Violations” FIDH stated that the SCO’s practices violate international law:

- Article 4(2) of the International Covenant on Civil and Political Rights (CCPR);
- Article 3, “non-refoulement,” of the 1987 Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; and
- Article 33, “Prohibition of expulsion or return (“refoulement”) of the 1954 Convention relating to the Status of Refugees.³⁷³

The SCO claims that the “UN is one of the key spheres of SCO’s activity” and that the relations between the UN and the SCO have become a prime example of interaction between global and regional organizations. On December 16, 2004, the UNGA adopted resolution 59/48, granting the SCO observer status at the United Nations.³⁷⁴ There have been subsequent reaffirmations of the UN and SCO cooperation such as on April 5 2010 in Tashkent³⁷⁵ and the 15th anniversary of the SCO on June 24, 2016.³⁷⁶ The Director of RATS recently highlighted a High Level event

the Director of RATS outlined RATS activities. From 2011 to 2015, RATS claimed to have prevented 20 terrorist attacks, 650 terrorist crimes, liquidated 44 bases and arrested 1700 members of international terrorist organizations, detained more than 2700 members of “illegal armed groups” and extradited 213 individuals affiliated with terrorist groups who were subsequently sentenced to long term imprisonment. In addition, RATS had blocked over 500 websites and taken down 200,000 pieces of content.

369. For a more in-depth explanation of the SCO, its principles and work please see FIDH’s Member organization, Human Rights in China’s, Whitepaper “Counter-Terrorism and Human Rights: The Impact of the Shanghai Cooperation Organization.”

370. For a chronology of the SCO’s creation and activities through the most up to date Convention on Counter-Terrorism in 2009 please refer to FIDH’s report “Shanghai Cooperation Organisation: a vehicle for human rights violations.” https://www.fidh.org/IMG/pdf/sco_report.pdf

371. Shanghai Convention available: <http://www.refworld.org/docid/49f5d9f92.html>

372. Implementation of the International Covenant on Civil and Political Rights in Kazakhstan: A Parallel NGO Submission by Human Rights in China: June 3, 2011

373. FIDH (2012): “The Shanghai Cooperation Organisation (SCO): A Vehicle for Human Rights Violations. The International Federation for Human Rights (FIDH), Pg 16.

374. U.N. Doc A/Res/59/48. This resolution gave the SCO the possibility to participate in the General Assembly as an observer.

375. Joint Declaration on SCO/UN Secretariat Cooperation signed on April 5, 2010. Later that year, on 13 December 2010 The UNGA adopted a resolution A/RES/65/124 regarding the Cooperation between the United Nations and the Shanghai Cooperation Organisation” Additional information of the SCO’s cooperation with the United Nations until 2012. <http://eng.sectsc.org/cooperation/>

376. Tashkent Declaration of the Fifteenth Anniversary of the Shanghai Cooperation Organization: <https://ccdcoe.org/sites/default/files/>

titled “United Nations and Shanghai Cooperation Organization: Jointly Countering Challenges and Threats,” that SCO’s cooperation with the United Nations by formalizing RATS relationship with UNODC and the CTC, was interested in developing more cooperation with the global counter-terrorism strategy by working with the UNCCT. The SCO-RATS detailed that the initial framework for cooperation between SCO RATS and CTED was signed on September 28, 2012 and January 28, 2013.³⁷⁷ On June 10, 2017, UN Secretary General remarked at the SCO summit that “Cooperation between our two Organizations is based on a solid foundation” and that the UN would “count on your [SCO’s] commitment to fight terrorism, address its root causes and ensure that our approaches meet international standards and human rights.”³⁷⁸

The core principle of the SCO is “mutual recognition,” adopted in 2005³⁷⁹, which gives each SCO state mutual recognition of acts of “terrorism, separatism, and extremism” in all other member-states. Simply put, whatever is deemed separatist, extremist or terrorist in one member-state is in all of the others. This is coupled with the 2009 SCO Convention which allows a member state’s jurisdiction to not be confined to its own territory and peoples meaning that one state can assert jurisdiction over people in another state, as can be done by China over Uyghur Kazakh citizens.

FIDH has documented extensive human rights abuses committed within the SCO framework of “mutual recognition.” FIDH’s report “Shanghai Cooperation Organisation: A Vehicle for Human Rights Violations” detailed human rights abuses that violate individuals right to asylum, freedom of religion, right to privacy, among others. The SCO framework and the domestic counter-terrorism agendas of its member states are mutually reinforcing as the SCO framework has trickled down to shape domestic legislation of SCO states and domestic legislation of SCO states has driven the work of the SCO.³⁸⁰

The SCO refers to terrorism, separatism and extremism as “the Three Evil forces.” Any activities conducted by RATS are aimed at these “three evil forces,” which are used interchangeably yet never clearly defined. Article 1 (1) of the Shanghai Convention which defines the Three Evils intertwines each “evil” into one framework in addition to an overly broad definition of terrorism that includes not just crimes against a population but crimes against the state.³⁸¹ The definition of terrorism laid

documents/SCO-160624-TashkentDeclaration.pdf

377. On October 23, 2014, the then Director of Executive Committee of RATS was invited to brief the CTC to discuss the phenomena of foreign terrorist fighters before meeting again on April 16, 2015, to follow up on their October discussions. It was publicly noted that CTED briefed RATS SCO on the ‘Upcoming special meetings of the counter-terrorism committees.’ “Zhang Xinfeng, Director of SCO RATS meets with Chen Weixiong, Deputy Executive Director of UN CTED and his delegation” <http://ecrats.org/en/news/4963>

378. <https://www.un.org/sg/en/content/sg/speeches/2017-06-09/secretary-general%E2%80%99s-shanghai-cooperation-organization-remarks>

379. 2005 Concept of Cooperation of SCO member States

380. For example chronology of SCO developments and its corresponding national impact please refer to page 20 of FIDH’s report “Shanghai Cooperation Organization: A vehicle for human rights violations” that shows the evolution of counter-terrorism legislation in the Kyrgyz Republic from 2001 - 2009.

381. 2001 Definition: 1) “terrorism” means: a. any act recognized as an offence in one of the treaties listed in the Annex to this Convention (hereinafter referred to as “the Annex”) and as defined in this Treaty; b. other act intended to cause death or serious bodily injury to a civilian, or any other person not taking an active part in the hostilities in a situation of armed conflict or to cause major damage to any material facility, as well as to organize, plan, aid and abet such act, when the purpose of such act, by its nature or context, is to intimidate a population, violate public security or to compel public authorities or an international organization to do or to abstain from doing any act,

out in the 2009 version of the SCO Convention on Counter-Terrorism is inherently different from the working international definition laid out in UNSC Resolution 1566; the SCO defines terrorism as an “ideology of violence.”³⁸² As FIDH member organization Human Rights in China (HRIC) stated the “ambiguity [of the definition of terrorism] could permit a state to cast as terrorism those social movements it characterizes as a threat to “public security,” without any evidence of actual or threatened harm to individual member of a population.”³⁸³ Thus far, the principles of separatism have not been a part of the conversation concerning terrorism and extremism at the United Nations.

In spite of the SCO charter maintaining the promotion and enjoyment of human rights and fundamental freedoms as one of its goals, ³⁸⁴ each of the six states who founded the SCO and those that are observer and dialogue partners show a continued egregious human rights records.

China and Russia, both permanent members of the Security Council, exert an incredible amount of influence in the SCO as its principal founders and within the UN counter-terrorism architecture. The SCO serves as a legitimating force for the domestic agendas of China and Russia that violate international norms, fundamental freedoms and human rights in an effort to create national unity by silencing opposition voices and shrinking the space for civil society, under the guise of protecting national security and combating terrorism, extremism, and separatism. The national counter-terrorism practices of China and Russia, harmonized through the SCO create a regional system of repression for of the world’s population in the name of national security and the UN must re-evaluate its modes of cooperation with this system.

CHINA

The People’s Republic of China (PRC) is a key leader of the Shanghai Cooperation Organization (SCO) which draws its primary focus of the “Three Evils” approach directly from China’s approach to national security and the “Shanghai Spirit.”³⁸⁵ The Three Evils approach effectively endorses and regionally harmonizes China’s repression of the Uyghur and Tibetan communities in the name of

and prosecuted in accordance with the national laws of the Parties;2) “separatism” means any act intended to violate territorial integrity of a State including by annexation of any part of its territory or to disintegrate a State, committed in a violent manner, as well as planning and preparing, and abetting such act, and subject to criminal prosecuting in accordance with the national laws of the Parties;3) “Extremism” is an act aimed at seizing or keeping power through the use of violence or changing violently the constitutional regime of a State, as well as a violent encroachment upon public security, including organization, for the above purposes, of illegal armed formations and participation in them, criminally prosecuted in conformity with the national laws of the Parties.Shanghai Convention. Adopted on June 15, 2001 and entered into force on March 29, 2003. http://eurasiangroup.org/files/documents/conventions_eng/The_20Shanghai_20Convention.pdf

382. For the text of the 2009 SCO Convention on Counter-Terrorism please review FIDH’s non-official translation: <https://www.fidh.org/en/issues/terrorism-surveillance-and-human-rights/The-Convention-Against-Terrorism>

383. Pg 43 Human Rights in China, “Counter-Terrorism and Human Rights: The Impact of the Shanghai Cooperation Organization”

384. SCO Charter, Article 1.

385. The Shanghai Five consisted of the majority of the SCO’s founding member states that began in 1996 through a series of treaties that demilitarized China’s borders. The SCO was created with the “shanghai six” as Uzbekistan joined and it officially became the Shanghai Cooperation Organization. The notion of “shanghai spirit” is a continuation of this cooperation from the Shanghai Five. For more information refer to “Catching the Shanghai Spirit” by Matthew Oresman <http://foreignpolicy.com/2009/10/27/catching-the-shanghai-spirit/>

separatism and extremism. As noted previously, the Special Rapporteur on Counter-Terrorism and Human Rights raised many concerns that “Conceptually, it has been challenging to differentiate between violent extremism and terrorism, with the two terms often used interchangeably and without a clear delineation of the boundaries between them.”³⁸⁶ The case of China is no different; the Three Evils are used interchangeably. FIDH member organization, Human Rights in China previously stated that “China’s extensive use of the Three Evils rhetoric to cast ethnic groups who express discontent with the official policies or seek greater autonomy as proponents of terrorism, extremism, and separatism” is magnified and harmonized through the SCO³⁸⁷ and has resulted in systematic violations of fundamental freedoms of association, expression, and religion, among others.

The law defines terrorism as:

Unlike the SCO and Russia, China's counter-terrorism law does not define "extremism." However, China has conflated extremism and terrorism with "religious extremism." FIDH recently released a joint report with the International Campaign for Tibet (ICT) regarding China's new counter-terrorism law and its impact on Tibetan and Uyghur communities, which demonstrates how elements of the counter-terrorism law and its previous draft were meant to criminalize parts of Tibetan and Uyghur identity through the notion of "separatism" and "splitism."³⁹⁰ Another key issue of the new

387. Pg 64, "Counter-Terrorism and Human Rights: The Impact of the Shanghai Cooperation Organization - A Human Rights in China Whitepaper" March 2011, http://www.hrichina.org/sites/default/files/publication_pdfs/2011-hric-sco-whitepaper-full.pdf

[illegible]

counter-terrorism law as noted in the report is the lack of due process and legal recourse to appeal “terrorist” designations. This is problematic in the framework of the SCO, which is underpinned by the principle of mutual recognition, whereby an individual targeted by the PRC would be designated throughout all surrounding SCO member states and prevent any possibility for appeal or even asylum. This new counter-terrorism law is also marked with President Xi Jinping’s desire for increased international cooperation in bilateral and multilateral, including through the SCO and the United Nations.

Since the creation of the SCO, China’s security priorities have taken precedence, especially those in the Xinjiang Uyghur Autonomous Region (XUAR), against the East Turkistan Islamic Movement (ETIM). This was underlined when the previous Kyrgyz Foreign Minister stated that “The fight against the ‘East Turkistan’ forces have been the top priority of the SCO since it was established.”³⁹¹ The East Turkistan Movement, designated a terrorist organization for its association and support of Al-Qaida,³⁹² seeks to create an independent state that would include the Xinjiang Uyghur Autonomous Region in addition to areas of six surrounding states. After the creation of the SCO in 2001, China’s Ministry of Public Security made three statements regarding individuals and organizations it deemed to be terrorist groups.³⁹³ All of these groups and individuals detailed are of Uyghur ethnicity, thus suggesting that the Chinese counter-terrorism efforts have been biased towards the Uyghur community. In China’s new counter-terrorism law, vague language allows for peaceful domestic protest or religious activities to be conflated with international terrorism.

Since the launch of a “strike hard operation” in 2014, Beijing says it has dismantled nearly 200 terrorist groups and at least 49 people have been executed.³⁹⁴ According to prosecutors in Xinjiang, 164 criminal arrests were approved in 2014, a rise of around 95% from the previous year.³⁹⁵ For example, in this “strike hard operation,” an imam and eight farmers from a village in Aksu (in Chinese, Akesu) prefecture were arrested and sentenced to prison from seven to nine years for an illegal gathering outside a government-designated mosque.³⁹⁶

In 2017, the Chinese government has taken a number of measures and adopted rules that directly target ethnic minority Uyghurs in what they call the “fight against extremism” These

391. “The Terrorist Nature of ‘East Turkestan’ separatists,” Xinhua, July 23, 2009. http://www.china.org.cn/china/xinjiang_unrest/2009-07/24/content_18198088.htm

392. Narrative Summaries of Reasons for Listing: QDe.088 Eastern Turkistan Islamic Movement” Summary became available on 07 April 2011: Reason for listing and additional information available here: https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list/summaries/entity/eastern-turkistan-islamic-movement

393. For further details regarding these translated statements refer to the analysis of HRIC and its non-compliance with the principle of legality on pages 69-70 in the Counter-Terrorism and Human Rights: The Impact of the Shanghai Cooperation Organization - A Human Rights in China White Paper: http://www.hrichina.org/sites/default/files/publication_pdfs/2011-hric-sco-whitepaper-full.pdf

394. Jacobs, Andrew, “Xinjiang Seethes Under Chinese Crackdown” <https://cn.nytimes.com/china/20160104/c04xinjiang/dual/?mcubz=1>

395. “Xinjiang Arrests Nearly Doubled in ‘14, Year of ‘Strike-Hard’ Campaign” Wall Street Journal available here: <https://blogs.wsj.com/chinarealtime/2015/01/23/xinjiang-arrests-nearly-doubled-in-14-year-of-strike-hard-campaign/>

396. “Strike Hard’ Hits Uyghur Family,” Radio Free Asia.

<http://www.rfa.org/english/news/uyghur/strike-hard-hits-03292016173833.html>; and “Uyghur Imam, Farmers Sentenced For Illegally Practicing Religion in China’s Xinjiang” <http://www.rfa.org/english/news/uyghur/uyghur-imam-farmers-sentenced-for-illegally-practicing-religion-in-chinas-xinjiang-03162016112010.html>

include: banning religious names for Muslim babies,³⁹⁷ banning “abnormal” beards and full face veils,³⁹⁸ confiscating Qurans published more than five years ago due to “extremist” content,³⁹⁹ and collecting DNA on mass even when those individuals have not committed a crime.⁴⁰⁰ During the month of Ramadan in 2017, it was reported that the government imposed fines and other sanctions on state employees who refuse to eat in the middle of the day and hundreds of ethnic minority Muslims were fined and sent to ‘study classes’ for observing Ramadan.⁴⁰¹

Most concerning is the Xinjiang Uyghur Autonomous Region Regulation on De-extremification, adopted at the 28th meeting of the Standing Committee of the 12th People’s Congress for the Xinjiang Uyghur Autonomous Region on March 29, 2017.⁴⁰² The new regulation sets out broad and often vague definitions for key concepts like “extremism.” According to Article 3, extremism is defined as “propositions and conduct using distortion of religious teachings or other means to



Peacekeeper Stands Guard as Head of MINUSMA Visits Kidal Following Fatal Attack in Mali 13 February 2016
UN Photo/Marco Dormino

397. “China bans religious names for Muslim babies in Xinjiang” The Guardian available here: <https://www.theguardian.com/world/2017/apr/25/china-bans-religious-names-for-muslims-babies-in-xinjiang>

398. “China Uighurs: Ban on long beards, veils in Xinjiang” Al Jazeera available here: <http://www.aljazeera.com/news/2017/04/china-uyghurs-ban-long-beards-veils-xinjiang-170401050336713.html>

399. Hoshur, Shohret, “XINJIANG AUTHORITIES CONFISCATE ‘EXTREMIST’ QURANS FROM UYGHUR MUSLIMS,” World Uyghur Congress: <http://www.uyghurcongress.org/en/?p=31664>

400. “China Targets Xinjiang Region For Mass DNA Sampling of Local Population” Radio Free Asia: <http://www.rfa.org/english/news/uyghur/uyghur-dna-05172017142909.html>

401. “Muslim Uyghurs in China Fined, Sent to ‘Study Classes’ For Observing Ramadan” Radio Free Asia, <http://www.rfa.org/english/news/china/muslims-ramadan-06142017134547.html>

402. “Xinjiang Uyghur Autonomous Region Regulation on De-extremification” Un-official english translation available via China Law Translate here: <http://www.chinalawtranslate.com>

incite hatred or discrimination and advocate violence.” Article 9 provides a list of 15 “words and actions” that amount to extremism, including possessing, accessing or distributing materials with extremist content, bearing symbols of “extremification”, “interfering with weddings and funerals or inheritance”, “interfering with cultural and recreational activities”, “spreading religious fanaticism through irregular beards or name selection”, and a catch-all provision which covers “Other speech and acts of extremification.”⁴⁰³

In this context, any activities by the Uyghur may be deemed a national security threat and because this framework underpins the SCO and its principle of mutual recognition, Uyghurs that are targeted would face even greater hurdles in claiming asylum in neighboring countries.

In the PRC and SCO’s framework of the Three Evils, the Tibetan people in the Tibetan Autonomous Region (TAR) have also been targeted by draconian counter-terrorism measures in an effort to suppress dissent and what China deems to be a threat to national stability. For example, in February 2016, Drukar Gyal, a Tibetan writer, was sentenced to three years in prison for inciting “separatism.” Associates of him believed he was targeted for his blog and social media posts regarding Tibet, which focused on the increased presence of armed security forces and political repression.⁴⁰⁴ In January 2016, Tashi Wangchuk, a Tibetan entrepreneur who advocates bilingual education in schools across Tibetan regions of China, was arrested for inciting separatism.⁴⁰⁵ He was arrested a month after he appeared in an article and short documentary in *The New York Times*.⁴⁰⁶ As of June 2017, he was still under detention without trial.

Kelsang Gyaltsen, the Special Representative of His Holiness the Dalai Lama to Europe stated that “it is important...to differentiate how Beijing views dissent and protests in Tibet or in Eastern Turkestan and dissent and protests in other parts of China. Protests by Tibetans and Uyghurs are officially characterized as ‘antagonistic’ and a threat to national security...the Chinese government conflates legitimate protests in these areas with separatism or terrorism.”⁴⁰⁷ The PRC has viewed the future of Tibet as a security concern for the entire republic, which has resulted in intense levels of securitization and surveillance of the TAR and a crackdown on Tibetan’s freedom of movement, freedom of religion, freedom of expression, among others.

Since January 2012, a policy of permanent stationing of government officials in monasteries was formalized through regulations. According to a government statistics published in August 2015,

403. Ibid.

404. “Tibetan blogger jailed for three years for ‘inciting separatism’” Committee to Protect Journalists <https://cpj.org/2016/02/tibetan-blogger-jailed-for-three-years-for-incitin.php>

405. Wong, Edward, “China Charges Tibetan Education Advocate With Inciting Separatism” <https://www.nytimes.com/2016/03/31/world/asia/china-tibet-tashi-wangchuk.html?mcubz=1>

406. Free Tibet, “One Year On, Tibetan Language Advocate Still Detained by China, Risks Harsh Sentence,” <https://freetibet.org/news-media/pr/one-year-tibetan-language-advocate-still-detained-china-risks-harsh-sentenc>

407. Pg 29 Section ‘The Impact of the Counter-Terrorism Law on Tibetans’ in FIDH/ICT joint report: China’s New Counter-Terrorism Law: Implications and Dangers for Tibetans and Uyghurs: https://www.fidh.org/IMG/pdf/20161103_china_ct_report_final.pdf

the TAR had more than 7,000 government cadres working in 1,787 monasteries.⁴⁰⁸ Information control is also tighter. According to a Human Rights Watch report in 2016, among the 479 cases of politically motivated detentions of Tibetans from 2013 to 2015, 71 individuals were arrested for distributing images or information⁴⁰⁹. China used the framework of counter-terrorism to justify this military boost including training exercises for how to respond to self-immolations, which pose no threat to other individuals, but under the new counter-terrorism law are deemed terrorist acts.⁴¹⁰

The measures taken by China demonstrate that the PRC intends to leverage international cooperation as a means of legitimizing national political motives, which seek to silence the grievances of the Tibetan and Uyghur people in the name of national security.

RUSSIA

Russia has been a leader in the development of the Shanghai Cooperation Organization and has leveraged the SCO's core principle of mutual recognition as a way of harmonizing Russian domestic counter-terrorism practices within the region.

The SCO's definition of terrorism draws parallels to the Russian definition of terrorism laid out in the first counter-terrorism law of 2006, Federal Law No 35-FZ on Counteraction of Terrorism.⁴¹¹

The 2006 Law on Counteracting Terrorism defines "terrorism" as:

*The ideology of violence and the practice of influencing decisions of government bodies, local authorities or international organizations by terrorising civilians and (or) through other unlawful acts of violence and an ideology of violence.*⁴¹²

Similarly, the definition of terrorism as outlined in the 2009 SCO convention refers to "an ideology

408. Freedom House "The Battle for China's Spirit: Religious Revival, Repression, and Resistance under Xi Jinping - Tibetan Buddhism," <https://freedomhouse.org/report/china-religious-freedom/tibetan-buddhism>

409. <https://www.hrw.org/world-report/2016>

410. Self-immolations by Tibetans: <https://www.savetibet.org/resources/fact-sheets/self-immolations-by-tibetans/>

411. Federal Law No. 35 of March 6, 2006 on Counteraction of Terrorism, adopted by the State Duma on February 26, 2006 and endorsed by the Federation Council on March 1, 2006. <http://www.legislationline.org/documents/action/popup/id/4365>

412. Article 3 (1), Federal Law

of violence”⁴¹³ and terrorist acts in order to achieve “political, religious, ideological or other ends.”⁴¹⁴ This demonstrates the key role that Russia plays in directing the priorities of the SCO and their means to harmonize Russian counter-terrorism priorities, including the fight against “ideology,” across the region in all SCO member states.

One of the counter-terrorism practices of the SCO has to do with the use of the RATS Database, a blacklist for those suspected of terrorism, extremism, and separatism that has been operational since June 28, 2004⁴¹⁵.⁴¹⁶ On 27-28 July 2016, the SCO met in St. Petersburg with the United Nations and 100 delegations from 63 national Russian states at the XVth Meeting of the Heads of Special Services, Security Agencies and Law-Enforcement Organizations to discuss another database, the International Counter-Terrorism Database (ICD).⁴¹⁷ Despite its “international” name, the ICD is a database created by the Russian Federation with the SCO as a partner. The database not only covers the aforementioned entities of the SCO database, but also includes a section focused on ideological counter-propaganda with information on the “preconditions of radicalization [and] testimonies by repentant terrorists.”⁴¹⁸ Russia’s current ideological counter-propaganda efforts violate the basic human rights of its people and these practices can only be amplified through their engagement SCO.

The entities, organizations, individuals, and practices on the database are a compilation of domestic targets for SCO states. For example, before the creation of the SCO the “Hizb ut-Tahir” party was legally able to operate in Russia, but not in Uzbekistan. After the creation of the SCO, it was listed domestically as a prohibited organization in Russia, illustrating how one organization or individual in one state is forever identified with the “three evils” in the region.

Following the July 2016 meeting in St Petersburg, we have good reasons to believe that this database of listings risks being replicated through the SCO at the United Nations: Russia confirmed it wanted the ICD to become a common security information tool and integrate this database into the UN Global Counter-Terrorism Strategy efforts. It is unclear whether the information collected for the ICD is in compliance with human rights. Should the ICD become the backbone of the Global

413. SCO Convention 2009: Un official translation from Russian by Human Rights in China and FIDH in the Annex A “Key Normative Documents of the Shanghai Cooperation Organisation” http://www.hrichina.org/sites/default/files/publication_pdfs/2011-hric-sco-whitepaper-full.pdf

Terrorism - an ideology of violence, and the practice of exerting influence on the decision-making of governments or international organizations by threatening or committing violent and (or) other criminal acts, connected with intimidating the population and aimed at causing injury to private individuals, society or the state;”

414. Ibid, available in Annex and pg 45. “Terrorist act - any act connected with intimidating the population, endangering human life and well-being, and intended to cause significant property damage, ecological disaster or other grave consequences in order to achieve political, religious, ideological or other ends by exerting influence on the decisionmaking of governments or international organizations, or the threat of committing such acts”

415. Decree of 24 July 2004 #310 On Signing the Agreement on the Database of the Regional AntiTerrorist Structure of the Shanghai Cooperation Organization http://fidh.org/DECREE-of-24-July-2004-310-On?var_mode=calcul

416. The human rights implications of these blacklists are further detailed in FIDH’s report “Shanghai Cooperation Organisation: A Vehicle for Human Rights abuses” on page 12-13 and in FIDH, HRIC report “Counter-terrorism and Human Rights: The Impact of the Shanghai Cooperation Organization” specifically in sections “Blacklist” and “RATs Database” from page 78-97.

417. Communiqué of the XVth Meeting of Heads of Special Services, Security Agencies and Law-Enforcement Organizations: <https://www.un.org/sc/ctc/wp-content/uploads/2016/09/COMMUNIQUE-ENG.pdf>

418. In theory, unclassified information on the ICD is accessible to civil society organizations, yet in practice this has not been made public

Counter-Terrorism Strategy (GCTS), this information could provide the framework for issues such as countering terrorist narratives without due human rights considerations.

In addition, through the core principle of “mutual recognition” SCO members must mutually recognize those individuals accused of terrorism, extremism, and separatism in another SCO state and deny their asylum by forcibly returning and extraditing them. This measure was identified as not compliant with human rights and criticized by the Human Rights Committee in 2009 stating that:

*The Committee is concerned about reports of extraditions and informal transfers by the State party to return foreign nationals to countries in which the practice of torture is alleged while relying on diplomatic assurances, notably within the framework of the 2001 Shanghai Convention on Combating Terrorism, Separatism and Extremism.*⁴¹⁹

The recent case of Hursheddin Fazihlov, a Tajik national who was forcibly extradited to Tajikistan on June 15, 2016, despite the decision by the European Court of Human Rights demonstrates the forcible return of asylum seekers under this principle of mutual recognition. Fazihlov was a butcher working by a famous mosque in Novokuzetskaya, Moscow, before the Prosecutor’s office in Tajikistan accused Fazilov of aiding in recruiting other Tajiks to join ISIS. The Prosecutor also charged him with sending others to Turkey using his personal expenses who then went on to Syria. As reported, the Russian Federal Security Services nor the Ministry of Internal Affairs had any information of these accused actions. Fazilov filed for asylum status in Russia, but was extradited by the Russian General Prosecutor’s office before the appeal was decided. His lawyers then filed an appeal with the Moscow City Court before writing to the European Court of Human Rights (ECHR). The ECHR applied Rule 39 of binding interim measures to protect Fazilov from extradition, but this was ignored and after much searching on behalf of his lawyers discovered through his relatives that Fazilov had been forcibly extradited to Tajikistan and was held in a prison in the capital of Dushanbe. Fazilov’s lawyers staunchly believe that the charges are unfounded as there was no indication of the activities taken place by Russian security services, but nevertheless the rapid extradition of Fazilov is an illustration of the binding principle of “mutual recognition” in practice that usurps any decision from the ECHR.⁴²⁰

419. Pg 8, Paragraph 17, UN Human Rights Committee, Consideration of Reports Submitted by State Parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee (Russian Federation), CCPR/C/RUS/CO/6 (2009), Available-<http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR.C.RUS.CO.6.pdf>

420. aSrappyan,Elena, Civic Assistance Committee, “Russia Ignores ECHR: Tajik Refugee Abducted” <http://refugee.ru/en/news/russia-ignores-echr-tajik-refugee-abducted/>

4. RULE OF LAW, CAPACITY BUILDING AND TECHNICAL ASSISTANCE

The Global Counter-Terrorism Strategy “stresses that a national criminal justice system based on respect for human rights and the rule of law, due process and fair trial guarantees, is one of the best means for effectively countering terrorism and ensuring accountability.”⁴²¹ Furthermore, national criminal justice systems based on respect for human rights and rule of law should not be restrained in the establishment of a State of Emergency as response to terrorism, a temporal measure that must demonstrate necessity and proportionality.

The UN as a norm setter has a responsibility to share best practices and deliver technical assistance and capacity building to develop human rights compliant national criminal justice systems as a means to counter-terrorism and provide justice for victims. Yet, the current architecture risks disseminating inconsistent advice concerning the rule of law capacity building and technical assistance as recalled by the Special Rapporteur on Counter-Terrorism and Human Rights who stated that one of the consequences of a siloed counter-terrorism architecture is the risk of “duplication of effort and expense, overstaffing, [and] inconsistent advice.”⁴²² In that regard, it is key to underscore that the only body referenced to deliver technical assistance relating to the rule of law is UNODC, tasked in the Global Counter-Terrorism Strategy.⁴²³ It is imperative that the UN provide a consistent and clear voice on establishing human rights based rule of law approaches to counter-terrorism.

In practice, however, as shown in the case of Mali, when the situation requires that a state strengthen its national criminal justice system in order to counter terrorism, the multitude of UN counter-terrorism bodies that engage in various rule of law capacity building programs results in unclear coordination on the ground and a lack of involvement of civil society to create effective justice processes.

421. Fifth Review, Global Counter Terrorism Strategy, A/70/L.55

422. A/HRC/34/61

423. “We recognize that States may require assistance in developing and maintaining such effective and rule of law-based criminal justice systems, and we encourage them to resort to the technical assistance delivered, inter alia, by the United Nations Office on Drugs and Crime.” The United Nations Global Counter - Terrorism Strategy A/RES/60/288

On the other hand, the case of France shows that even states that tout an effective criminal justice system to counter-terrorism in compliance with human rights law, can fail to uphold the Global Counter-Terrorism Strategy in the face of grave terror attacks : indeed, the establishment of a continuous state of emergency has resulted in serious violations of individual rights and a setback to the rule of law without tangible effects on countering terrorism.

MALI

Mali is on the front-lines of combating terrorism where violence in the country has only escalated in the recent years. Daily, Malian citizens face a lack of security with little to no access to justice. FIDH and its member organization, the Association malienne des droits de l'Homme (AMDH) have been documenting the conflict in Mali and human rights violations committed by non-state actors as well as state security actors in the framework of countering terrorism. Today, the threat of terrorism in Mali remains high with various terrorist groups operating in the North of the country and increasingly drawing violence to the center. The situation in Mali has continued to deteriorate with the lack of progress in implementing the 2015 peace agreement. FIDH has made a call for a change in the political and security strategy aimed at fighting terrorist groups in Mali and the Sahel as a whole. This past year, 2016, FIDH compiled a list of more than 385 attacks in the north and center of the country, which have caused at least 332 deaths including 207 civilians. Additionally, there have been at least 621 cases of torture, kidnappings, arbitrary detentions and extortions all all kinds.⁴²⁴ Such acts have allegedly been perpetrated mainly by armed groups, but also by the Malian army (FAMA) and international forces (MINUSMA and Barkhane Operation).



MINUSMA Camp Attacked in Kidal 08 June 2017
UN Photo/Sylvain Liechti

424. FIDH Declaration: "2016: Increase in Violence and Terrorist Acts in the North and Center" <https://www.fidh.org/en/region/Africa/mali/2016-increase-in-violence-and-terrorist-acts-in-the-north-and-the>

Since its establishment in 2013, the United Nations Multidimensional Integrated Stabilization Mission in Mali has been a target of attacks as it has worked to stabilize the north of the country and ensure the implementation of the peace agreement signed in 2015. The conflict in Mali has presented the UN peace and security architecture with pressing questions as to whether and how the UN should engage with counter-terrorism in peacekeeping operations.

The situation in Mali also raises important questions on how the United Nations should prioritize the promotion and protection of human rights in counter-terrorism activities. As AMDH has documented, human rights violations allegedly committed by security forces have been carried out in the name of countering terrorism, making it paramount that Mali and the international forces prioritize the promotion and protection of human rights while countering terrorism. As a nexus of UN counter-terrorism activities, the case of Mali presents a test for the United Nations' ability to effectively coordinate and develop human rights compliant counter-terrorism measures that regularly involve civil society.

The response of the Malian army to the phenomenon of insecurity and terrorism in the north and the center of the country has indeed been accompanied by numerous human rights violations, including dozens of arbitrary arrests, cases of torture and summary executions. More than 300 people were arrested in 2016 for reasons related to the conflict, and our organizations estimate that at least a dozen of them are being illegally detained (no arrest warrant or expired arrest warrant). Specifically nearly 200 people are detained in terrorism-related charges. In 2017, FIDH and AMDH documented several cases of people arrested in the Segou region in 2016 and detained for up to several months, without apparent motive and without being informed of the charges they were charged with; those people have been subjected to torture, fatal for some of them at the hands of the Malian army.

"Soldiers tied our hands and feet and covered our faces. We could not see anything and it was difficult to breathe. Then they took us to the bush. They beat us for hours, the blows rained. I tried to move to protect myself, but I could not. They also burned plastic that they spilled on my back. They asked me if I was a jihadist, if I knew jihadists, and I tirelessly replied that no, I was only looking for daily bread for my family, but they did not hear anything" a victim testified.

These human rights violations are perpetrated against local populations, particularly against some communities perceived as affiliated to the Macina Liberation Front, whose cooperation is nevertheless crucial for the Malian authorities to collect intelligence in order to combat both terrorist and new armed self-defense groups. Such acts seem to contradict more and more the overall objective of those counter-terrorism operations. On the other hand, local elected officials

and individuals perceived as cooperating with the Malian army or the international forces are also subject to reprisals by terrorist or armed groups, which can be observed through the multiple assassinations of mayors and prominent members of the community, and many cases of threats and intimidation. It is up to the State to protect these people effectively in order to effectively fight against terrorism together.

The Malian authorities operations against communities perceived to be affiliated with the Macina Liberation Front have fueled intercommunal violence.⁴²⁵⁴²⁶ Particularly the Pehl community in regions of Mopti and Segou. FIDH and AMDH have documented the impacts that these communal clashes which have resulted in the deaths of more than 117 people and 87 wounded since April 28th, 2017 in the regions of Segou and Mopti.⁴²⁷

FIDH and AMDH therefore urge the Malian authorities to assume all their responsibilities to uphold human rights in counter-terrorism operations and to investigate and prosecute those responsible for such serious violations.

The three key pieces of legislation that make up Mali's legal framework are: the Malian Criminal Code, the Law "Concerning Acts of Terrorism," and the law "Combating Money Laundering and the Financing of Terrorism." The drafting of these two latest legislations has been done with support from UN entities such as UNODC, who have also supported Mali by providing workshops on legal aid and trainings of judges. In its 2006 report to the Counter-Terrorism Committee (CTC) on its implementation of resolution 1373, the Malian government requested assistance for training national officials in counter-terrorism (police, judges, customs officials, officers of the court and support in drafting counter-terrorism legislation.⁴²⁸ It is unclear what is the status of this request and additional ones as CTEDs reports are confidential after 2006. Despite these efforts, FIDH and AMDH have documented cases where individuals do not have access to justice and accountability for crimes committed in this framework of counter-terrorism, particularly with a lack of access to legal remedy, arbitrary detention, and torture, among others.

425. Notably the Dozos, among the Bambara community.

426. The Pehl community in particular is perceived as being affiliated with the terrorist movement of the preacher Pehu Amou Kouffa. Although some of the leaders of this group are actually Pehls, the Macina / Ansar Dine Liberation front is not a popular movement within the Pehl community. The amalgam between peoples and terrorists, however, is increasing, both within the local population and within the Malian army.

427. Pg 9, FIDH and AMDH "Terrorism and Impunity Jeopardize the Fragile Peace Agreement: Joint Position Paper" https://www.fidh.org/IMG/pdf/note_mali_mai_2017_en_web-2.pdf

428. Letter dated 19 December 2006 from Permanent Representative of Mali to the United Nations addressed to the Chairman of the Counter-Terrorism Committee, S/2006/1038

In effort to create an effective criminal justice system that can handle terrorism cases, the Specialized Judicial Unit on Terrorism and Transnational Crime was created by Amendments to the Code of Criminal Procedure on 21 May 2013. The Unit is focused on the fight against terrorism and transnational crime, and has since been fully staffed and is located in Commune VI of Bamako. According to the law, the Specialized Judicial Unit is to be composed of :

- A special prosecutor's office under the authority of the prosecutor's office of the Republic;
- Specialized training firms;
- Of a specialized investigation brigade called a "brigade for the fight against terrorism and transnational organized crime," comprised of officers and agents of the police and gendarmerie who will act at the disposal of the Ministry of Justice by the ministers responsible for the Forces Armées and Force Securite;
- Assistants who are specialists or experts according to their fields of competence, who may be placed at the disposal of the Minister of Justice by the competent authority
- Officers and agents of the judicial police and the said assistants shall be placed under the authority of the public prosecutor, (addressee of the reports and reports drawn up in the matters defined in article 609-I);
- The public prosecutor of specialized judicial unit will specialize and receive the proceedings of the Central Office for Narcotic Drugs with respect to international trafficking in drugs, narcotic drugs, psychotropic substances, precursors and controlled substances.⁴²⁹

The court's jurisdiction was recently extended to deal with crimes against humanity, genocide and torture.⁴³⁰ However, the Unit was only fully operational in 2014 with the appointment of the main prosecutor and is only investigating cases related to terrorism from January 2015. Yet, to date, there have been no final judgements on any cases so far. FIDH and AMDH call for an international response that prioritizes justice and the fight against impunity that goes beyond this framework of only a counter-terrorism justice system. The current Special Judicial unit cannot deliver justice to the victims of terrorist groups and victims of those violated in counter-terrorism operations, especially those committed before 2015, despite the Malian political and judicial authorities affirming their commitment.⁴³¹

429. Loi No 2013-016 du 21 Mai 2013, Portant modification de la loi no 01-080 du 20 Aout 2001 portant code de procedure penale

430. This decision is now part of the transitional justice policy adopted by the Government of Mali.

431. For further detail regarding justice processes and the current security situation please refer to FIDH's report " Mali: Terrorism and impunity jeopardize the fragile peace agreement" <https://www.fidh.org/en/region/Africa/mali/mali-terrorism-and-impunity-jeopardize-the-fragile-peace-agreement>

Each of the main entities of the UN Counter-Terrorism complex have programs in Mali, including the:

- United Nations Office on Drugs and Crime (Terrorism Prevention Branch)
- Counter-Terrorism Committee (CTC) and Counter-Terrorism Committee Executive Directorate (CTED)
- Counter Terrorism Implementation Task Force (CTITF)
- Department of Peacekeeping Operations' Office of the Rule of Law and Security Institutions (OROLSI)



Scene from MINUSMA Camp in Timbuktu 16 May 2017
UN Photo/Sylvain Liechti

With so many entities working in Mali, the UN system runs the risk of disseminating inconsistent advice and in the case of Mali the current efforts by UN entities are not effectively creating a criminal justice system that is able to provide justice for victims. In an effort to coordinate all these bodies through the CTITF office program called the Integrated Assistance on Countering Terrorism (I-ACT), with the goal of “enhancing the capacity within the UN system to help interested Member States. Mali became an I-ACT partner in April 2015 after a mission was undertaken by the DPA-CTITF Office, DPKO - Office of the Rule of Law and Security Institutions (OROLSI) and UNODC. These entities claim to be “coordinating” through the I-ACT mechanism with the aim of the I-ACT initiative to prevent the duplication of efforts and coordination. However, it is still unclear whether the work of the I-ACT is an example of coordination or whether it is duplication and FIDH and AMDH confirm that there has been no interaction between the I-ACT initiative and civil society.

During FIDH's interviews, respondents questioned whether OROLSI duplicated the efforts of CTED and UNODC in their rule of law capacity building. DPKO-ORLSI has initiated a project to develop national guidance tools to help host states with security sector and rule of law programs including: adoption of legal frameworks, national PVE action plans, capacity building of terrorism prosecution efforts, prevention of radicalization in prisons, border management, and mainstreaming counter-terrorism efforts into SSR programs. These national capacity building projects are said to be developed in coordination with CTED, CTITF, and UNODC, however it is unclear who is tasked with what and if it is vital that each entity be involved. UNODC noted that it signed a MoU with MINUSMA in 2015 on the notion of the need to force collaboration as peacekeeping and fighting drugs and organized crime are related issues that need a joint response.⁴³² concerning their cooperation.

While many of these organs claim to be working in coordination concerning rule of law programs, it is key to note that UNODC is the only body reference to deliver technical assistance relating to rule of law capacity building in the Global Counter Terrorism Strategy. In terms of past programming, UNODC has worked with the Malian State to develop a legal framework for countering terrorism.⁴³³ However, this work continues without consultation with civil society and it is unclear how their coordination prioritizes the promotion and protection of human rights as victims of terrorism and counter-terrorism do not have access to effective justice in the current criminal justice system.

FRANCE



A police raid carried out on 27 November 2015 in the morning of a squat in Pre Saint Gervais, occupied by persons suspected of "disturbing public order during the COP21", according to police sources AFP Photo Laurent Emmanuel

432. With support from the governments of Austria and Japan they claim to have completed many programs with the Malian police forces, gendarmerie, and national guard on issues of organized crime, gender-based violence, and terrorism. <https://www.unodc.org/westandcentralafrica/en/mali---unodc---dpko-partnership.html>

433. UNODC in 2015 convened a meeting with the Ministry of Justice of Mali focused on a national legal aid strategy in order to address issues of lack of justice and support the protection of human rights. "UNODC presents national legal aid strategy in Mali" <https://www.unodc.org/westandcentralafrica/en/mali-national-legal-aid-strategy.html>

In the wake of a series of deadly terrorist attacks in and around Paris, the President of the Republic declared a state of emergency applicable to the entire country on 13 November 2015.⁴³⁴

France continues to be under a State of Emergency, recently extended (July 2017) until November 1st 2017, that has not demonstrated tangible effects on countering terrorism, but has resulted in human rights violations of individual rights and setbacks to the rule of law. FIDH and its member organization in France, LDH (Ligue des droits de l'Homme - French Human Rights League) conducted an international fact-finding mission in March 2016 to examine the compatibility of measures taken by French government in response to the recent terror attacks with respect to human rights.⁴³⁵

The state of emergency is provided for by Law no. 55-385 of 3 April 1955⁴³⁶ for an initial duration of 12 days. LDH and FIDH did not oppose the initial 12-day state of emergency (decided by the President F. Hollande on 13th of November). Objections did arise, however, when the state of emergency was extended.⁴³⁷ On 20 November 2015, the French Parliament voted by an overwhelming majority of 551 members of Parliament in favor, six against, and one abstained, to extend the state of emergency for a period of three months with the approval of Law no. 2015-1501. The text adopted allowed for a three-month extension and, more significantly, broadened the scope of measures applicable in a state of emergency.

On 16 February 2016, the National Assembly voted a further three-month extension of the state of emergency, through to 26 May 2016. At that point the government was entitled to call for another extension, and its intention to do so was announced in April. However, police searches conducted outside of criminal investigations and without any warrant issued by a judge (perquisitions administratives) would no longer be authorized. Thus, in May 2016, the state of emergency was extended until the end of July, voted for by a smaller number of members of Parliament, but still rather large majority. The state of emergency was then extended until the end of July 2016.

After the Nice "truck attack" on the Bastille day of July 2016 which left 89 people dead, President Francois Hollande with Prime Minister Manuel Valls decided to extend the state of emergency through the Presidential elections to protect electoral events. Shortly after assuming the Presidency, President Emmanuel Macron declared in a communique⁴³⁸ that the State of Emergency would be

434. On 16 November 2015, the President convened the Congress (a joint meeting of the National Assembly and Senate) and announced his intention to amend the Constitution, firstly, to include the principle of the state of emergency and, secondly, to authorize the revocation of French nationality for persons who commit acts of terrorism. After a lengthy debate, principally on revoking French nationality, the President failed to obtain the backing of the majority (a number of pro-government members of Parliament disapproved of the measure) and was forced to withdraw the draft amendments.

435. "Counter-terrorism measures & human rights: When the exception becomes the norm" available in French and English: <https://www.fidh.org/en/region/europe-central-asia/france/report-slams-year-long-application-of-state-of-emergency-in-france>

436. The Law of 3 April 1955 on state of emergency, adopted to deal with the situation in Algeria, had been applied on seven occasions before the attacks on 13 November 2015.

437. See, among other reactions: www.fidh.org/en/europe-central-asia/France/getting-out-of-the-state-of-emergency

438. Communique 24 Mai 2017: <http://www.elysee.fr/communiqués-de-presse/article/conseil-de-defense-3/>

extended to November 1st 2017, the drafting a new counter-terrorism law,⁴³⁹ and the creation of a new counter-terrorism task force.⁴⁴⁰

For more information regarding legal provisions of the state of emergency please refer to the full analysis provided in FIDH's report.⁴⁴¹

IMPLEMENTATION OF THE STATE OF EMERGENCY

One of the troubling characteristics of the measures implemented under the state of emergency is the transfer of jurisdiction over restrictions to individual rights to the administrative courts, who can only intervene a posteriori, i.e. once the measure leading to the restriction of rights has already been enforced. Therefore, orders authorising house arrests, searches and the dissolution of associations (although demonstrations have always been under the authority of the administrative judge) are no longer overseen, either a priori or a posteriori, by the ordinary courts.⁴⁴² Given the nature of the administrative courts, the stage at which they intervene and their jurisprudence, the oversight that they exercise is unbalanced and inadequate. Administrative courts give greater credence to administrative authorities and are prepared to accept declarations made by the police as evidence, which reverses the burden of proof to the detriment of the individuals in question. Furthermore, the only legal consequence of any decision invalidating a search order is the awarding of compensation. Agents of the State are consequently guaranteed impunity. Finally, by admitting that the measures can be applied in circumstances totally unrelated to the events that led to the state of emergency being declared, the administrative courts have facilitated the work of public authorities to a considerable extent but have also authorized them to act for reasons other than those officially stated, and have thus broadened the scope of application of the state of emergency

CONSEQUENCES OF STATE OF EMERGENCY MEASURES

Numerous testimonies collected by the FIDH mission from persons subjected to searches and subsequently placed under house arrest, as well as from their lawyers, described the use of violence during searches with, in some cases, acts of humiliation. Searches were always carried out by armed, often hooded, members of the security forces, despite a memorandum from the Minister of the Interior addressed to all Prefects, which called for respect of people's rights and

439. The President of the Republic asked the Government to propose measures to strengthen the security in the face of the terrorist threat outside of a state of emergency so that a legislative text can be prepared in the coming weeks.

440. In order to fulfill his commitments, the President of the Republic gave instructions for the establishment of a coordination center for all services engaged in the fight against terrorism, the organization of which will be decided under his authority by the defense and security council by June 7th.

441. "Counter-terrorism measures & human rights: When the exception becomes the norm" available in French and English: <https://www.fidh.org/en/region/europe-central-asia/france/report-slams-year-long-application-of-state-of-emergency-in-france>

442. An exception is made in cases where criminal charges result from administrative measures. Several cases have thus been dismissed by the ordinary courts before they reach trial on the basis that unfounded or anonymous search orders are illegal.

property.⁴⁴³ There were exceptions however; some witnesses described searches where violence was not used. On the other hand, all of the criminal investigation officers involved in the searches were armed. Individuals whose premises were searched stated that the officers did not use their weapons, but that they were clearly used as a means of intimidation. One individual whose premises were searched told members of the FIDH mission that:

"They came in and put a gun to my head". [...] "The search was carried out by armed, hooded policemen. We opened the door; they put my 13-year old son outside. They put me to one side and searched me. I was treated as though I was nothing".⁴⁴⁴

According to another witness:

"They handcuffed me. The key broke in the handcuffs. The blood in my hands couldn't circulate anymore. When they finally took the handcuffs off, I had marks on my hands".⁴⁴⁵

The Collectif contre l'islamophobie en France (CCIF - Organisation against Islamophobia in France) stated that:

"[...] some searches were badly conducted; others were carried out respectfully. We have proof of interventions by the law enforcement agencies where affronts to religion were made. One pregnant woman lost her baby because of an intervention; a weapon was pointed at her throughout, as well as at all of the children who were present".

According to Dominique Raimbourg, President of the National Assembly's Commission des lois: "every search is a necessarily unpleasant intrusion. In general, it involves breaking down a door. The Défenseur des droits (Ombudsman) asked that special attention be given to vulnerable persons. Someone must be assigned to take care of the minors". Beyond the use of violence, the sense of humiliation felt by those subjected to searches is striking. This can be seen from one of the interviews conducted by the FIDH mission:

"They [the police] sat down on the sofa and watched television. Some of them laughed. When I prepared food for my son, they asked me if I had made some for them".⁴⁴⁶

All those interviewed also spoke of the serious consequences of house arrest on their personal lives. In some cases, it affected their health, as was the case of one person the FIDH fact-finding

443. Memorandum from the Minister of the Interior dated 25 November 2015, on "Administrative searches under the state of emergency".

444. Reported by Mrs. G and recorded by the members of the FIDH fact-finding mission. All persons interviewed wanted to remain anonymous.

445. Reported by M. B

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mission met with, in the presence of their lawyer, who suffered two strokes during the period in which he was confined to his home but, fearful of the consequences of infringing the order, was afraid to go to hospital for necessary follow-up appointments.

For French Muslims, whether born in France or having lived there from a very young age, the measures taken under the state of emergency have a direct impact on their sense of belonging within French society. Interviews conducted by the FIDH fact-finding mission with people who had been subjected to searches and/or house arrest and their lawyers have highlighted the risk of stigmatisation and the destruction of social links that is inherent to such measures, as well as their intrinsically discriminatory nature. Among the many cases that illustrate this type of discrimination is that of a family with two sisters, whose cousin had travelled to Syria; only the sister who had converted to Islam was placed under house arrest. In another family, where one of the children had travelled to a conflict zone, only the brother born in Algeria was placed under house arrest, even though the family had informed the authorities of their 18 year old son's departure to Syria. In addition, one of the testimonies collected by the fact-finding mission stated that during a search, half of the questions asked by the police concerned the religious practices of the woman targeted.

QUESTIONING THE EFFECTIVENESS OF THE STATE OF EMERGENCY

Interviews conducted by the FIDH delegation indicate that many of the state of emergency measures, and searches in particular, were used for reasons other than counter-terrorism.

FIDH mission met with a representative of the branch of the CGT trade union that represents police officers, who explained that most of the searches were carried out by members of the drug squad, especially in the Paris region. This means that searches supervised by the administrative courts and provided for under the state of emergency were used in relation to investigations unrelated to terrorism. According to the Union syndicale des magistrats (USM – France's largest national syndicate of judges): "We were told that the Prefect, to increase the number of searches carried out, asked the Prosecutor which individuals could be the object of them, even if these individuals had no connection with terrorism". This practice was denounced as an effort by the authorities to "boost" the number of searches conducted and opportunistically issue search orders for persons linked to ordinary crimes by claiming the existence of a direct link between drug trafficking and terrorism.

While the real impact of the state of emergency on the organization of protests and demonstrations is not easily ascertainable, because most of the available data relates to house arrests and searches, it is clear that the state of emergency has changed the applicable legal framework.

Representatives of the CGT trade union who met with the FIDH delegation were very critical of this change. They explained that certain demonstrations were forbidden on the basis that it was impossible to guarantee the security of the public due to a lack of security personnel and that, for others, authorization was only given the night before, thereby disrupting the organization and effectively preventing the protest from being held. The framework applicable to the organization of protests and demonstrations has thus shifted from a system of notification to one of authorisation. This situation increases the risk of violations of the right to demonstrate.

Legal challenges to measures taken under the state of emergency reveals their generally negative impact according to the majority of people with whom the FIDH delegation met, the impact of measures taken under the state of emergency was generally negative. Although the President of the Commission des lois suggested that there had been positive effects with regard to hampering the abilities of those who might provide logistical support to terrorist networks, CNCDH felt that the results were not positive and that introducing these measures required the mobilisation of huge resources and was extremely expensive. According to statistics from the Ministry of the Interior and quoted by CNCDH, the state of emergency has led to 576 legal proceedings being opened (the majority of which concern possession of weapons or glorification of terrorism), with 392 arrests leading to 314 people being detained for questioning, of whom 65 were found guilty and 64 received prison sentences. Only six cases were opened by the specialist national anti-terrorist unit (pôle antiterroriste, part of the ordinary courts system), which is extremely low in light of the overall number of house arrests and searches

Ultimately, very few proceedings on the dismantling of terrorist networks have been initiated on the basis of measures resulting from the state of emergency. The measures have mainly been used to initiate proceedings in the ordinary courts for charges such as glorification of terrorism (apologie de terrorisme), drug trafficking, and possession of weapons.

In conclusion, beyond repercussions for individual rights, what seems most striking is the stigmatisation of one part of the population. Nearly all of the measures taken by the Interior Ministry concerned Muslims and were applied in clearly identified geographical areas. It was thus inevitable that feelings of discrimination would emerge, adding to those that were already felt on various levels even before the terrorist attacks in France. What would have been a limited effect had the situation only lasted 12 days can be amplified as the state of emergency is continuously extended. Feelings of stigmatisation grew even stronger because public authorities did nothing to stop disparaging remarks, even by State representatives. At present, it is not possible to predict how these feelings of humiliation will evolve.

Our observations have led us to conclude that the application of the state of emergency, in terms of the measures implemented under it, confers near total impunity upon agents of the State. It is virtually impossible to prove racist insults or acts of violence when they take place behind-closed-doors in the context of searches conducted by the security forces. On balance, even if the state of emergency was justified during the first 12 days, the French authorities have not yet demonstrated its effectiveness with regard to its original purpose: fighting against acts of terrorism. Virtually no tangible effects on the fight against terrorism have been observed. The figures provided in the current report show that not a single terrorist network has been dismantled and that most of the legal proceedings that have been opened following searches are not being conducted under anti-terrorist legislation.

The state of emergency has, however, generated significant violations of individual rights as well as a setback to the rule of law and has increased stigmatisation on the basis of religion or country of origin for a specific section of the population living in France. The establishment of this exceptional regime as well as its application has brought to light a willingness on the part of public authorities to grant themselves additional powers (through the law on intelligence, the presence of police on public transport and in stations, and the law on reforms to the Code of Criminal Procedure), while restricting avenues for effective remedies and increasing the scope of their control (from organized crimes to minor offenses) beyond that officially intended under the state of emergency. By failing to submit two important issues for debate (whether in Parliament or within society as a whole), the government gives the impression that acts of terrorism have provided an opportunity for strengthening the powers of the Executive, to the detriment of individual and collective rights and liberties.

The recent new counter-terrorism law submitted by the French government and that was adopted by the French Senate on 19 July 2017 has encountered strong opposition from French human rights groups, among which the Ligue des droits de l'Homme, but also from academics, the French National Consultative Commission for Human Rights, the French Ombudsman, who have all publicly voiced their concern. The draft law is criticized as enacting permanently in French legislation controversial measures deriving from the state of emergency, although these measures had been presented by the Executive as limited in time to justify their derogatory nature. Although the Senate has introduced certain amendments to the text, the main one being the limitation to 2021 of the implementation of the administrative surveillance measures, individual liberty restriction measures and administrative searches, there is still a strong concern that these – however limited – improvements could be overruled by the National Assembly, which will examine the text in October 2017.

In light of the Global Counter-Terrorism Strategy's call for effective national criminal justice systems as one of the best means to counter terrorism, France's state of emergency and its exceptional powers actually reduce the effectiveness of the justice system and deprive victims of violations of individual liberties of the right to an effective remedy, reducing the effectiveness of its counter-terrorism measures.

5. TERRORIST NARRATIVES AND INTERNET AND COMMUNICATIONS TECHNOLOGIES (ICT)

Terrorist groups like Da'esh/ ISIS have used information technologies as a tool to easily disseminate violent propaganda for international recruitment, to incite violence, and commit terrorist attacks against people and critical infrastructure. With the explosion of social networks and the efficiency of digitally sharing media, terrorist groups have used the Internet as a platform to spread their hate speech and recruit potential followers.

The use of ICT for recruitment of foreign terrorist fighters by Da'esh/ISIS and for the organization of individual terrorist attacks have become a key issue that UN counter-terrorism bodies have sought to tackle under the notion of countering "terrorist narratives." However, the discussion of countering "terrorist narratives," a vague term left legally undefined, involved a number of hazards in its current form.

States have pivoted their counter-terrorism focus to countering terrorist narratives and are now waging campaigns on terrorist "ideologies." During its presidency of the Security Council in May 2016, Egypt, already Chair of the CTC, organized an open debate during which the Security Council was briefed by Steve Crown, Vice-President and Deputy General Counsel of Microsoft Corporation, Deputy Secretary General Jan Eliasson, and Mohi El-Din Afifi, Secretary-General of Al Azhar Islamic Research Academy.

The Council subsequently adopted a Presidential Statement requesting CTED to develop an international framework to counter terrorist narratives to provide "recommended guidelines and good practices to counter, in compliance with international law, the ways that ISIL (Da'esh),

Al-Qaida and associated individuals, groups, undertakings, and entities use their narratives to encourage, motivate, and recruit others to commit terrorist attacks.”⁴⁴⁷

The Framework was recently welcomed in UNSC Resolution 2354 adopted on May 24, 2017⁴⁴⁸ and is organized in three separate areas of focus: legal measures, public/private partnerships, and counter narratives. Yet, the framework does not deploy a human rights approach. In fact, the concept of countering terrorist “narratives,” legally undefined, is ultimately dangerous. This framework, which we believe was prematurely adopted, falls short on key aspects and potentially gives states the greenlight to adopt more national policies that violate international law and human rights in the name of countering “narratives” or “ideology.”

First, the framework intends to counter terrorist narratives without a comprehensive and evidence-based assessment of conditions conducive to extremism and terrorism. It fails notably to address how human rights abuses are used as an incentive to recruit foreign terrorist fighters, or even how the lack of enjoyment of human rights, notably economic and social rights, fuel terrorist violence.

Secondly, the framework leaves too much space for national interpretation. For instance, according to the text, “the line between unlawful and lawful communications can be difficult to discern,” but it does not provide any meaningful recommendations as for how states should uphold their obligation to guarantee freedom of expression under article 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR), while countering terrorism and violent extremism.⁴⁴⁹ Furthermore, the framework fails to provide sufficient guidelines to protect human rights while countering terrorist narratives, as it does not refer to the best practices developed by the Office of the High Commissioner for Human Rights (OHCHR), the recommendations of the Special Rapporteur on Counter-Terrorism and Human Rights, or how OHCHR participated in the consultations and will be available to work closely with states on developing human rights compliant national frameworks to counter terrorist narratives.

Last but not least, the development process of the comprehensive international framework has not been transparent and the text was elaborated without consultation of civil society, namely human rights, organizations. Indeed, the CTC, with CTED held closed consultations with member states, but have not meaningfully provided a space for civil society engagement and contributions apart from one special meeting on “preventing the exploitation of ICT for terrorist purposes” in December 2016. There were no final recommendations produced from the meeting, but some non governmental organizations were invited to participate such as Access Now and Global Network Initiative specifically for the panel Privacy and Freedom of Expression in the Digital Age. Prior to

447. Statement by the President of the Security Council, May 11, 2016, S/PRST/2016/6

448. A/RES/2354

449. S/2017/375

the release of the framework, CTED launched a new partnership with ICT4Peace and technology companies called “Tech Against Terrorism” to provide guidance and advice to member states.⁴⁵⁰

It must be underlined that Egypt, a country with a long history of abusing counter-terrorism to crack down on political opposition and independent civil society, as detailed previously and will be detailed further below, has been instrumental in leading this effort to counter terrorist narratives, with the adoption of the framework that its Presidency requested, the CTC approved under its chairmanship, and its country voted for in its position on the Security Council.

Ultimately, this framework might be detrimental to the work of the newly established Office of Counter-Terrorism (OCT), which will be responsible for facilitating the implementation of the framework with member states, under the leadership of an Under Secretary General selected by Russia whose commitment to the promotion and protection of human rights in this context has yet to be pledged.

State measures that seek to counter terrorist “ideologies” or narratives online and in person run the risk to violate individuals’ fundamental freedom of expression and right to privacy. In too many instances, States have demonstrated that the overextension of cyber-security laws and efforts to counter terrorist narratives online and in communities have been used to target those with dissenting voices, not those who pose a genuine threat to national security. This rhetoric of targeting terrorism and extremism on the internet and eradicating terrorist ideologies has been used against human rights defenders, civil society organizations, the press, bloggers, and individuals. Some states see issues of privacy, freedom of expression, freedom of speech, and human rights as secondary consequences that cannot be invoked due to the severity of the threat of terrorism.

In practice, exerting state control over internet activity, when seen as a threat to national security is operationally difficult. For states, this can be done through public/private partnerships because while the internet is a de facto public space, much of it is privately owned. Terrorist propaganda is easily available on the internet with simple searches finding ISIS recruitment videos, copies of Dabiq, and more, but internet providers and social media networks are already working to remove the content as in most cases it inherently violates their terms of services. However, it must be noted that illegal activity, transactions and content are also found in the dark web,⁴⁵¹ where law enforcement and regulatory bodies are not always legally able to enter. Ultimately, current

450. CTED “Launch of “Tech Against Terrorism” — a partnership between technology companies, governments, and UN CTED” <https://www.un.org/sc/ctc/blog/2017/03/31/launch-of-tech-against-terrorism-a-partnership-between-technology-companies-governments-and-un-cted/>

451. The dark web is accessible through software is is a place where transactions, sites, and users can remain anonymous. The internet can be best understood in three layers: the surface web where we have most of our interact, the deep web that includes organizational databases (academic databases, medical records, etc) and the dark web where illegal activities can take place, including dark web markets known as cryptomarkets.

government action regarding ICT primarily results from public/private partnerships and thus must adhere to the Guiding Principles on Business and Human Rights.⁴⁵²

States' programs of surveillance, exceptional powers of law enforcement under state of emergency, and cybersecurity legislation adopted in the name of countering terrorism are also fertile ground for the violation of fundamental freedoms especially when the measures taken do not adhere to the principles of necessity and proportionality, as shown in the examples below.

CHINA

The People's Republic of China's (PRC) interests in countering terrorist narratives, especially on the internet, give China additional reason to bolster its censorship apparatus and cybersecurity regulations at the cost of human rights. President Xi Jinping previously stated that "there is no national security without cybersecurity" (没有网络安全就没有国家安全)⁴⁵³ underlining China's emphasis on regulating cyberspace. China's recently adopted Cybersecurity Law, which strengthens the PRC's cyber-governance, must be understood in the context of the PRC's two other national security laws: the National Security Law⁴⁵⁴ and the Counter-terrorism law.⁴⁵⁵ The motivations behind this Cybersecurity law have been demonstrated at the United Nations and concerns legitimized in the context of the UN's Comprehensive International Framework to counter terrorist narratives.

When China held the Presidency of the Security Council in 2016, it reaffirmed that one of its key areas of concern was “Preventing terrorists from using the Internet and social media to commit terrorist acts”⁴⁵⁶ China uses the language of combating extremist ideology in its goal of achieving “state stability” as a means to silencing certain ethnic groups for expressing their grievances, specifically the Tibetans and the Uyghurs. For example, China shut down the internet in the XUAR from July 2009 to May 2010, this newly adopted Cybersecurity law boosts the PRC’s ability to violate its citizen’s freedom of expression.⁴⁵⁷

CYBERSECURITY LAW

On November 7, 2016 China adopted a Cybersecurity law in a suite of national security laws

452. Guiding Principles on Business and Human Rights Implementing the United Nations "Protect, Respect and Remedy" Framework: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

453. English Translation: "The First meeting of the leading network security and information leading group convened Xi Jinping delivered an important speech" http://www.cac.gov.cn/2014-02/27/c_133148354.htm

454. Standing Committee of the National People's Congress, National Security Law of the People's Republic of China, Unofficial English translation:<http://www.chinalawtranslate.com/%E5%8F%8D%E6%81%90%E6%80%96%E4%B8%BB%E4%B9%80%E6%B3%95-%EF%BC%82%015%E6%8C%89/?lang=en>

455. Standing Committee of the National People's Congress, Counter-Terrorism Law of the People's Republic of China, Unofficial English <http://www.chinalawtranslate.com/%E5%8F%8D%E6%81%90%E6%80%96%E4%B8%BB%E4%B9%89%E6%B3%95-%EF%BC%882015%E6%89/?lang=en>

456. Pg 3, Letter Dated 1 April 2016 from the Permanent Representative of China to the United Nations addressed to the Secretary-General: S/2016/306

457. "China restores Xinjian internet". Reuters, available <http://news.bbc.co.uk/2/hi/asia-pacific/8682145.stm>

“to ensure network security, to safeguard cyberspace sovereignty, national security, and society public interests.”⁴⁵⁸ However, the language of the law is ambiguous and vague, giving the PRC flexibility to interpret the law based on political motivations.

The Cybersecurity Law facilitates greater criminalization of activities taking place via internet and communications technologies and it places stricter regulations over companies, users, and internet providers, among others. It states that any individual or organization must not use networks to engage in,

*activities endangering national security, national honor and interests, inciting subversion of national sovereignty, the overturn of the socialist system, inciting separatism, undermining national unity, advocating terrorism or extremism, inciting ethnic hatred and ethnic discrimination, disseminating violent, obscene or sexual information, creating or disseminating false information to disrupt the economic or social order, as well as infringing on the reputation, privacy, intellectual property or other lawful rights and interests of others, and other such acts.*⁴⁵⁹

The vague language of “undermining national unity,” “disseminating false information” and “endangering...national honor,” gives the PRC a blunt tool for criminalizing all forms of peaceful dissent. Specifically, the language concerning “advocating terrorism or extremism” aligns with China’s responsibilities to implement UNSC Resolution 1624 to counter incitement to terrorist acts, but is not clear on exactly what constitutes “advocating.” Furthermore, the law,

- Empowers the state to shut down internet and communication networks in particular regions in order “to fulfill the need to protect national security and social public order,”⁴⁶⁰
- Ensures that the state has full access to all ICT information on its borders by mandating that all data be stored inside China,⁴⁶¹
- Mandates that all internet users must be identified by their real name, for which the internet providers are liable if they do not comply.⁴⁶²

This law might ultimately have a chilling effect on freedom of expression, repress digital civil society, and violate individuals right to privacy, freedom of expression, among others.

The Cybersecurity law and China’s support for the International Framework to counter terrorist narratives must also be understood in the context of China’s goal to “strengthen guidance of

458. Article 1, 2016 Cybersecurity Law, Unofficial English Translation: <http://www.chinalawtranslate.com/cybersecuritylaw/?lang=en>
Original Text: http://www.npc.gov.cn/npc/xinwen/2016-11/07/content_2001605.htm

459. Article 12 of Cybersecurity Law

460. Article 58.

461. Article 66

462. Chapter IV, Network Information Security

public opinion on the internet” and “purify the environment of public opinion on the Internet,” in what it refers to as the “Ideological Sphere” and “ideological battlefield.”⁴⁶³ This crackdown on internet and communications technologies supports China’s censorship regime and ability to shape public opinion through state propaganda. The UN’s efforts to counter-terrorist narratives through the adoption of this framework, laid out in broad terms, sanctions the China’s repressive actions by justifying the need to counter certain forms of “ideology” or “narratives.”

Currently, China has an enormous virtual civil society, that will be greatly impacted by these new restrictions, which is comprised of mobile Internet users in China reaching 695 million as documented by December 2016, an increase of 75.5 million from the end of 2015, and total internet users in China reaching 731 million Internet users.⁴⁶⁴ The scope of active internet users demands a safe and secure internet where the right to privacy is recognized and protected to support the civil society. However, the ambiguous cybersecurity law rather supports China’s censorship efforts to shrink that space for civil society by strictly regulating information access and social media online.

The Cybersecurity law claims to protect the rights of citizens⁴⁶⁵ and ensure a governing system of cyber networks that is “multilateral, democratic, and transparent.”⁴⁶⁶ However, this law runs counter to the PRC’s obligations under the ICCPR, Article 19 which states that,

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The PRC has not ratified the convention, but is a signatory, meaning that the PRC is bound to the ICCPR in good faith and must “refrain from acts which would defeat the object and purpose of the treaty.”⁴⁶⁷

As the Cyber Security law has just gone into effect, FIDH and HRIC are vigilant as to how the law might be instrumentalized. In the past, individuals have been charged regarding their online commentary, which serves as an illustration of potential charges that can arbitrarily be brought against citizens to control digital discourse. For example, in February 2017, six people were detained for their online comments “insulting police officers.”⁴⁶⁸ However, these people are not

463. Communiqué on the Current State of the Ideological Sphere A Notice from the Central Committee of the Communist Party of China’s General Office: [Unofficial English Translation] <http://www.chinafile.com/document-9-chinafile-translation>

464. China Internet Network Information Center (CNNIC) “Statistical Report on Internet Development in China” (July 2017) <https://cnnic.com.cn/IDR/ReportDownloads/201706/P020170608523740585924.pdf>

465. Article 12

466. Article 7.

467. Vienna Convention on the Law of Treaties, U.N.T.S. 115, 331 (1969), Art. 18: “A state is obliged to refrain from acts which would defeat the purpose of a treaty when... it has signed the treaty.” PRC acceded to VCLT on September 3, 1997.

468. <http://www.rfa.org/english/news/china/chinese-police-detain-netizens-for-insulting-officers-online-02012017122417.html>

charged under the Cybersecurity Law, as it was not in effect, but were charged with “picking quarrels and stirring up trouble.” This Cybersecurity Law gives the PRC a blunt tool of surveillance and censorship to violate human rights and the notion of counter-terrorist narratives at the United Nations empowers that tool.

EGYPT

The UN’s newly adopted Comprehensive International Framework is the clearest demonstration of the power an individual state can wield in crafting international counter-terrorism efforts at the UN that ultimately serve national interests. Egypt, a country that has used the fight against terrorism as a means to silence human rights defenders and organizations, has successfully crafted a counter-terrorism initiative during its seat on the Security Council from start to finish. This International Framework ultimately gives Egypt a license to continue its ideological crackdown on political opponent and dissenting voices. It was under Egypt’s Presidency at the Security Council in May 2015, that the council held an open debate on countering terrorist narratives and adopted a Presidential Statement that called on the CTC to develop an international framework for countering terrorist narratives inviting representatives of Al-Azhar Observer For Combating Terrorism⁴⁶⁹ and Microsoft to brief.⁴⁷⁰ Then, under its chairmanship of the Security Council Counter Terrorism Committee (CTC) it oversaw the drafting of the framework it requested, before drafting the Security Council resolution that was voted for by its own country and adopted at the UN security council. This framework to counter terrorist narratives, a legally undefined term that remains vague and without adequate human rights considerations in its conceptualization in the framework, must be understood in the context of Egypt’s domestic ideological fight against the Muslim Brotherhood, “false news” and “sedition.”

Egypt has continuously sought to garner international support for its fight against terrorism at the UN. However, cooperation with Egypt concerning counter-terrorism though also authorizes Egypt’s repressive measures that target dissenting voices, political opponents, human rights defenders, human rights organizations, and the press in the name of counter-terrorism. This recent endeavor to counter terrorist narratives, conceptualized by Egypt during its UNSC presidency, serves the government’s crackdown against the Muslim Brotherhood, which it considers to be the ideological predecessor of ISIL(Da’esh).

The Muslim Brotherhood is currently a listed terrorist organization in Egypt and was previously banned under President Mubarak. Following the Arab Spring that removed Mubarak from power,

469. online publication monitoring the discourse around Islam in print and online publications in several languages

470. Observer’s Statements at the UNSC Open Debate May 2015: <https://www.un.org/sc/ctc/wp-content/uploads/2017/01/2016-12-01-Session-V-1-Dec-Dr.-Mahmoud-Nagah-Ahmed-Farag-Khalaf-Al-Azhar-Observer.pdf>

Mohamed Morsi, a Muslim Brotherhood candidate, rose to power and the Muslim Brotherhood was made legal. However, after Morsi was overthrown by a military coup a year later, under President Sisi the movement was listed a terrorist organization. The Muslim Brotherhood is considered a terrorist organizations by Egypt's allies, Saudi Arabia and Russia, two states that exercise significant influence in the UN counter-terrorism structure through the UNCCT and OCT. In addition, the new US administration under Trump is currently considering designating the Muslim Brother as a terrorist organization,⁴⁷¹ a significant shift from previous administrations, in addition to supporting Sisi's "leadership" in the fight against terrorism.⁴⁷² It has been argued and questioned whether it is the state's crackdown on the Muslim Brotherhood that actually radicalizes its members to commit acts of violence to respond to state violence.⁴⁷³ What seems pretty clear is that the combination of systemic and grave human rights violations in places of detention certainly exacerbate trends of increasing use of violence against the State, as recently reaffirmed by the UN High Commissioner for Human Rights⁴⁷⁴ :

"...a state of emergency, the massive numbers of detentions, reports of torture, and continued arbitrary arrests - all of this we believe facilitates radicalisation in prisons ."

The concept note that was circulated ahead of the debate concerning counter-terrorist narratives did not explicitly name the Muslim Brotherhood as a source of terrorist narratives. Instead, in relation to Al-Qaida, Boko Haram, Al-Shabaab, Nusrah Front and ISIL(Da'esh), the concept note stated that:

*The ideologies of those groups are very similar. They emanate and derive from the same extremist, takfiri and violent concepts and views that were propagated in the mid-twentieth century by some scholars who diverted the true and proper interpretation of religion to achieve political objectives.*⁴⁷⁵

This blame of mid-twentieth scholars as the underpinning of terrorist narratives alludes to the mid-twentieth scholars that gave rise to the Muslim Brotherhood. State press outlets have referred to the 2013 coup that overthrew Morsi as a victory over the Muslim Brotherhood which was conspiring to overthrow Egypt's republic. In Egypt's attacks of human rights activists in the press, the state has accused those charged with working with the Muslim Brotherhood. Those that remain active on reporting human rights abuses committed since 2011 have been accused

471. Baker, Peter: "White House Weighs Terrorist Designation for Muslim Brotherhood" https://www.nytimes.com/2017/02/07/world/middleeast/muslim-brotherhood-terrorism-trump.html?_r=0

472. "Donald Trump says US is 'very much behind' Egypt's Sisi" <http://www.aljazeera.com/news/2017/04/donald-trump-welcomes-egypt-sisi-white-house-170403164810319.html>

473. Ammar Fayed, "Is the crackdown on the Muslim Brotherhood pushing the group toward violence?" <https://www.brookings.edu/research/is-the-crackdown-on-the-muslim-brotherhood-pushing-the-group-toward-violence/>

474. <http://www.reuters.com/article/us-egypt-rights-un-idUSKBN17X1MI>

475. "Concept note for the Security Council open debate on the theme "Countering the narratives and ideologies of terrorism", to be held on 11 May 2016" S/2016/416

of carrying out what are referred to as “brotherhood schemes” by “receiving foreign funds to spread chaos and fragment the country.”⁴⁷⁶

Egypt’s efforts to counter undefined vague narratives serves its current counter-terrorism regime that targets human rights defenders, human rights organizations, trade unions and striking workers, members of the peaceful left/center left political opposition, the press and all other dissenting voices. In Egypt’s crackdown, the state accuses human rights advocates of spreading “fake news” and “sedition.” FIDH member organization, the Cairo Institute for Human Rights Studies (CIHRS), and other organizations undersigned a letter concerning young human rights activists who were arrested during a police campaign in May 2017 and charged with,

“joining a terrorist group to overthrow the state, promoting terrorist directly and indirectly to commit a terrorist act and using a website to promote the criticisms and ideologies of terrorist groups to overthrow the state and the regime.”

CIHRS details the case of Mohamed Walid, a member of the Bread and Freedom Party in Suez, who was charged with “sedition” or “spreading rumors on social networking websites that could lead to false rumors” against the state, a direct relation to the UN’s efforts to counter terrorist narratives in an effort to refute “false” narratives. The charges brought against Walid were in reference to Facebook posts he made including “I am neither pro-Mubarak nor do I belong to the Muslim Brotherhood, I just want to live as a human being.”⁴⁷⁷

A number of Egyptian workers were also accused of terrorism-related charges for striking or demonstrating for labor rights issues. For example, Hossam el Naggar, a worker and member of Strong Egypt party from Alexandria was arrested in January 2017 and jailed for 7 months (then released in July): he was accused of being a member of the Muslim Brotherhood i.e. joining a terrorist organization⁴⁷⁸.

In another instance, on September 24, 2016, six workers from the Cairo Transportation Authority were arrested from their homes. “For a week the authorities refused to confirm the men’s whereabouts, until they were eventually located in the custody of the National Security Agency. The six have been charged with “incitement to strike” and “membership of a banned organization. The police raids followed a decision by activists in the Cairo bus garages to organize a strike coinciding with the beginning of the new school year to demand wage rises to meet the

476. Hamzawy, Amr “Legislating Authoritarianism: Egypt’s New Era of Repression” <http://carnegieendowment.org/2017/03/16/legislating-authoritarianism-egypt-s-new-era-of-repression-pub-68285>

477. “Egyptian Human Rights Organizations: Together against the police campaign targeting activists through prosecution and detention.” <http://www.cihrs.org/?p=19920&lang=en>

478. <http://english.ahram.org.eg/NewsContent/1/64/256711/Egypt/Politics-/Detained-Strong-Egypt-Party-official-under-investi.aspx>

spiraling cost of living”.⁴⁷⁹.

These charges of promoting “ideologies of terrorist groups” online aligns with the aims of the new comprehensive international framework, but demonstrate how the Egyptian state harshly targets young people and social network users. Ultimately, the broad comprehensive international framework, without strong human rights guidelines, legitimizes Egypt’s measures and gives the government a license to continue to develop blunt tool to eliminate civil society and dissent in the name of national security. In the most recent illustration, in May 2017, the Egyptian government blocked dozens of news websites, including independent and secular ones and according to an official report by the government the websites were blocked for alleged support of terrorism. By August 18, 2017 the list of blocked websites has reached 127 websites, including those of human rights organizations⁴⁸⁰.

UNITED STATES

The focus on countering terrorist narratives and securing the internet serves the United States’ existing surveillance regime, which has unlawfully targeted Americans, particularly Muslim Americans. The notion of countering a “narrative” gives the government greater impetus to track, analyze and store vast amounts of data generated by its citizens. The United States engages in countering messaging through the State Department’s Global Engagement Center, a piece of the United States’ countering violent extremism strategy. The Center defines counter messaging as “discrediting ISIL’s nihilistic and hateful vision to potential and current sympathizers.”⁴⁸¹ However, in the UN’s Comprehensive International Framework to Counter Terrorist Narratives, counter messaging is one element of countering “narratives” and as noted previously, the Framework does not provide enough meaningful guidance for how states can ensure that efforts to counter “narratives” are human rights compliant. Thus, in understanding the potential impact of the UN’s Framework in the United States’ efforts to counter undefined terrorist “narratives” particularly on the internet, one must understand the human rights impact of its robust and intrusive surveillance regime.

FIDH member organization, the Center for Constitutional Rights (CCR) has been actively seized on addressing unlawful forms of surveillance in the name of national security since CCR was founded. However, following 9/11 and the subsequent War on Terrorism, CCR has worked tirelessly to protect American’s civil liberties from the government’s unconstitutional spying on communities and activists with cases such that resulted in the USA Patriot ACT deemed

479. darityinitiative.org/2016/10/17/alexandria-shipyard-workers-and-cairo-bus-workers-in-court-18-and-19-october/

480. <https://cpj.org/2017/08/egypt-should-stop-blocking-access-to-rights-organi.php>

481. United States State Department Global Engagement Center <https://www.state.gov/r/gec/>

unconstitutional. Following that case in 2004, in 2006, CCR filed *CCR v. Bush* (then became *v. Obama*) challenging the warrantless surveillance program of the NSA as in violation of the Foreign Intelligence Surveillance Act (FISA). CCR “argued that the NSA surveillance program violated the Foreign Intelligence Surveillance Act of 1978 and its clear criminal prohibitions on such surveillance, exceeded the President’s authority under Article II of the Constitution, and violated the First and Fourth Amendments.” CCR represents many men detained at Guantanamo, many of CCR’s communications were with and to other countries to support their clients that are protected under client attorney privilege, but were it was later revealed and reported by the New York Times that in fact there were a few cases where the government might have surveilled lawyer-client discussions. Ultimately, the government claimed to shut down the initial program in 2007, but subsequently obtained Congressional approval to reimplement the program “pursuant to court order.” As of March 3, 2014, this case was denied by the Supreme Court. Following the Patriot Act and incredible forms of surveillance under the NSA as brought to light by CCR’s case, news reporting, and Edward Snowden’s leaks demonstrate that the United States has the technical means and experience to take more steps regulate the internet under the notion of countering “terrorist narratives.” This notion feeds into warrantless suspicion and surveillance at the expense of fundamental human rights and civil liberties.

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CHAPTER 4

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSION

The United Nations counter-terrorism architecture has grown into a tangled web of actors and activities. However, with the momentum following the creation of the Office of Counter-Terrorism (OCT), the UN has the opportunity to start a new chapter of meaningful reform of the counter-terrorism complex driven by a commitment to impact, effective coordination, prevention, and human rights compliance. In fact, this past year FIDH noticed improvement regarding new publicly available information and greater investment in external communication on meetings and activities than all previous years.

Currently, the counter-terrorism structure is welcoming new leadership that has the opportunity to make significant positive changes, with a new Under-Secretary General for Counter-Terrorism, a new Executive Director of CTED, and a new Special Rapporteur on Counter-Terrorism and Human Rights. It is a prime time to revisit the prioritization of activities, centralization of human rights, and establish new internal working methods. With almost 40 entities involved in counter terrorism, spread across four pillars and focused on a variety of outcomes on the one hand and with member states focusing on implementing relevant Security Council resolutions on the other, the tentacular architecture should strive for clear and consistent prioritization of activities to create a clear roadmap ahead that has key benchmarks for evaluation. FIDH has identified that in practice, human rights in the context of the UN's counter-terrorism work is often minimized to a generic line in a resolution, reduced to a few questions on a country visit survey, comprised of a small staff sprinkled throughout the secretariat and security council bodies, securitized in the Preventing Violent Extremism agenda and underfunded in its programming.

Moving forward, any additional reform should centralize human rights in all UN counter-terrorism activities.

The creation of the Office of Counter-Terrorism (OCT) and the appointment of a new USG presents an opportunity to re-evaluate programs, coordination, and coherence across the system with a strong commitment to human rights oversight and programming. In this vein, the USG should begin his tenure by establishing effective lines of communication and new working methods between all involved entities, particularly CTED, OHCHR, and the Special Rapporteur on Counter-Terrorism and Human Rights. Similarly, the USG has the opportunity to establish new relationships between the OCT and civil society, particularly local civil society actors, including through UN country teams, where the OCT coordinates programs. The USG, in close cooperation with the Secretary General, who has undertaken the reform of the UN's peace and security architecture,

now has the opportunity to establish new practices in developing programming across all four pillars, establishing comprehensive monitoring and evaluation, and addressing instances of duplication across the complex.

Member states that wish to address the human rights deficit and structural shortcomings of the structure should increase their involvement and scrutiny of its activities. FIDH reported on the process of reform and attended various thematic counter-terrorism meetings that were rushed and did not stimulate debate. The creation of the OCT and the ensuing debate regarding the composition of the Advisory Board to the UNCCT, calls on member states to determine their level of involvement in order to balance the influence of other states that hold key positions.

The UN has created a confusing and complex structure to address terrorism, operating in silos with a competition for resources and program ownership. However, all actors and entities involved have an opportunity to invest in meaningful reform that centralizes human rights, streamlines counter-terrorism activities amongst entities, and establishes clear ways to measure efficacy.

RECOMMENDATIONS

TO THE GENERAL ASSEMBLY, THE SECURITY COUNCIL AND THE SECRETARY GENERAL

GENERAL RECOMMENDATIONS:

- All UN bodies and entities involved in counter-terrorism should ensure greater transparency in all of their work by making their activities publicly available.
- The cooperation between the General Assembly, Security Council bodies and Secretariat bodies should be clearly articulated in order to overcome silos and effectively coordinate counter-terrorism efforts.
- Overlaps in mandates of existing counter-terrorism entities should be articulated, publicly communicated and addressed.
- The effectiveness and the impact of UN counter-terrorism measures and programmes should be systematically evaluated.
- All UN counter-terrorism entities and programmes should be funded through the regular UN budget in order to encourage equal influence in the development of counter-terrorism activities, including the potential expansion of the OCT and ensure that counter-terrorism bodies have the necessary staff and remain independent.
- The cooperation with regional institutions and fora, such as the Shanghai Cooperation Organization, the African Union and the Organization of Islamic Cooperation, on counter-terrorism issues should be re-evaluated to ensure that their work is compliant with human rights and international law.
- The UN should convene a high level conference to generate the necessary political will to finalize negotiations on the Comprehensive Convention on Terrorism.

ON COUNTER-TERRORISM AND HUMAN RIGHTS:

- The OCT should work closely with the Office of the High Commissioner for Human Rights (OHCHR) to determine how human rights will be structurally incorporated into the OCT and mainstreamed into its work.
- Moving on, OHCHR should be funded to conduct an independent human rights evaluation of all counter-terrorism capacity building programs conducted in the framework of the Global Counter-Terrorism Strategy.
- The OCT and UNSC subsidiary organs should bolster their cooperation with OHCHR, the Special Rapporteur on Counter-Terrorism and other Special Procedures whose work pertains to counter-terrorism and counter-extremism related issues.
- The OCT should engage and develop cooperation with civil society organization, human rights organizations in particular.
- Additional resources should be allocated to better support further collaboration between the Special Rapporteur on Counter-Terrorism and Human Rights, other relevant Special Procedures and UN counter-terrorism entities.
- Before mainstreaming the PVE agenda into all UN counter-terrorism entities, the OCT should, through the UNCCT, OHCHR as well as non-UN expertise, pursue efforts to better define the concept of « violent extremism » in order to adopt a narrow approach.
- Ensure that any UN counter-terrorism technical assistance or capacity building programme in the context of the International Framework for Counter-Terrorist Narratives encompasses the promotion and protection of human-rights and is developed in cooperation with local civil society, in particular with human rights, development and community-engagement organizations.
- More resources should be allocated to human rights officers dedicated to counter-terrorism and human rights issues, and to Pillar IV capacity building programs.

TO THE OCT:

ON STRUCTURE

- To further clarify the structure of the Office, we recommend that the labels of the UNCCT and the CTITF be removed and that the two entities fully merge into the OCT and under its name.
- To ensure impartiality, we recommend that the Advisory Board of the UNCCT be terminated at the end of the 5 year programme, in December 2020. The UNCCT's Advisory Board could be reformed in order to ensure its independence, enhance its performance to allocate resources and effectively monitor activities by switching its composition from member states to expert eminent personalities, similar to the Peacebuilding Fund's Advisory Group.
- The I-ACT should be dissolved as its nature, objectives and added-value remain unclear and the programme might duplicate elements of CTED's mandate.
- UNRCCA should be made a CTITF entity given its extensive counter-terrorism work.
- UNODC-TB should be incorporated into the OCT so the USG could better coordinate all capacity building and technical assistance
- UNODC-TB should be relocated to New York

ON ACTIVITIES

- All CTITF working groups should create a more systematic and efficient way of meeting with a clear agenda and objective that outlines clear activities and priorities
- The OCT should mandate a thorough evaluation of all duplications and overlaps on thematic issues conducted by UN entities
- The OCT leadership should have access to CTED classified information and liaise regularly
- The OCT should develop, manage and evaluate capacity building programs in the field in cooperation with UN country teams.
- The OCT (including CTITF and UNCCT), CTED, UNODC-TB, and other counter-terrorism

bodies and departments should regularly consult with civil society and should rely more on non-official documentation from civil society and academia to better inform their work.

TO THE UNSC:

- Since the 1566 committee has not met or produced any added-value in 7 years, it should be dissolved
- CTED should increase their capacity to make country visits more human rights sensitive by adding human rights questions to their assessment tools
- The CTC and CTED should be encouraged to consult non official information, notably provided by human rights organizations, when preparing for country visits
- CTED should ensure all teams involved in country visits are well verse on the human rights consequences of their area of technical expertise. This would be best by ensuring that CTED human rights staff are present on all country visits.





ANNEX 1: SECURITY COUNCIL RESOLUTIONS

RESOLUTION 1373 (2001)

UN member states took a comprehensive stand against terrorism by adopting UNSC resolution 1373 (2001) under Ch. VII. Resolution 1373 (2001) was an unprecedented resolution that was the first legally binding Chapter VII resolution that applied to all UN membership as opposed to previous counter-terrorism efforts that were only valid if the state had voluntarily signed the relevant international treaty. Resolution 1373 (2001) required member states to reporting their progress on its implementation to the newly created Counter-Terrorism Committee (CTC) in order to monitor the state's compliance and support capacity building efforts

The resolution required that states prevent and suppress the financing of terrorist acts by adopting new legal financial measures, take appropriate protective measures before granting refugee status to ensure that asylum seekers had not participated in the incitement of terrorist acts, prevent the movement of terrorists with border controls, and refrain from providing financial support to those who engaged in terrorist activity. Resolution 1373 (2001) also called on states to increase information sharing efforts and to become parties to all relevant international conventions and protocols.

Resolution 1373 failed to define terrorism and make any specific mentions to human rights apart from paragraph (f) that appropriate measures must be taken in conformity with international standards of human rights before granting refugee status.⁴⁸²

RESOLUTION 1456 (2003)

Resolution 1456 (2003) was adopted following a ministerial debate and remedied in part the lack of human rights language of resolution 1373 (2001). Resolution 1456 (2003) stated that :

States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law;

This mention of human rights did not ensure that the CTC conducted human rights monitoring

482. S/RES/1373

of the implementation of 1373 (2001). It was not until the creation of CTED by resolution 1535 (2004) did the Committee engage with human rights. However, this resolution also called on the 13 states who had not reported their efforts and the 56 states that were late in their reporting on the implementation.

RESOLUTION 1566 (2004)

The most recognized definition of terrorism in practice is laid out in UNSC Resolution 1566 (2004) adopted under Ch. VIII; the resolution created the 1566 working group to explore practical measures on individuals or groups outside of those on the 1267 Al Qaida Sanctions Committee and a fund for victims of terrorism. Resolution 1566 practically “defines” terrorism in paragraph 3:

3. Recalls that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature;⁴⁸³

RESOLUTION 1624 (2005)

Resolution 1624 was drafted by the United Kingdom that calls on states to adopt measures that:

- Prohibit by law incitement to commit a terrorist act or acts
- Prevent such conduct
- Deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct;

The resolution called states to report on their implementation of the resolution to the Counter-Terrorism Committee (CTC). In addition, the preamble of the resolution expressed that it was “imperative to combat terrorism in all its forms and manifestations by all means” but stressed that those measures must comply with state’s obligations under international law and they should be

483. S/RES/1566 (2004)

adopted in accordance to human rights law. Resolution 1624 also address the initial debates of a roots causes approach by emphasizing in the preamble that the international community should continue efforts to prevent the targeting of different religions and cultures in addition to addressing development and conflict issues which can “contribute to strengthening the international fight against terrorism.”⁴⁸⁴

RESOLUTION 2178 (2014)

Resolution 2178, adopted under Ch. VII, requires member states to adopt measures to address the phenomena of foreign terrorist fighters (FTFs) including while reaffirming that state’s measures must comply with their obligations under international law, noting that failure to do so would contribute to radicalization. Resolution 2178 (2014) was the first resolution to address the notion of violent extremism as a condition “conducive to terrorism” and calls upon states to enhance their efforts to counter violent extremism.” The resolution defined a foreign terrorist fighter as:

individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict,

Resolution 2178 (2014) called on states to establish measures to prevent and suppress the recruiting, organizing, transporting, and equipping of FTFs, establish laws that prosecute those who depart for the purpose of terrorism, collect or provide funds for FTFs, and prevent entry and transit of those who are believed to be traveling for terrorism-related purposes by requiring airlines to release advance passenger information.

Resolution 2178 (2014) directed the 1267 Committee and the Analytical Support and Sanctions Monitoring Team to develop with CTED, a special focus on the threat of FTFs and coordinate efforts to monitor and respond to that threat with CTITF. The Monitoring Team was required to provide an update on the threat posed by FTFs, including a comprehensive assessment and recommendations for action. The CTC and CTED were requested to identify gaps in member states’ capacities to stem the flow of FTFs, identify best practices, and facilitate technical assistance through the “development...of comprehensive counter-terrorism strategies that encompass countering violent radicalization and the flow of foreign terrorist fighters.”⁴⁸⁵

484. S/RES/1624

485. S/RES/2178

ANNEX 2: CTITF ENTITIES

SECURITY COUNCIL

- 1267 MT: Al Qaida/Taliban Monitoring Team
- 1540 EG: Group of Experts of 1540 Committee
- CTED: Counter-terrorism Committee Executive Directorate

SECRETARIAT

- Special Advisor on PoG: Office of The Special Adviser on The Prevention of Genocide
- Sexual Violence in Conflict: Office of The Special Advisor on Sexual Violence in Conflict
- DPA: Department of Political Affairs
- DPKO: Department of Peacekeeping Operations
- DPI: Department of Public Information
- DSS: Department of Safety and Security
- EOSG: Executive Office of the Secretary-General
- ODA: Office for Disarmament Affairs
- OHCHR: Office of the High Commissioner for Human Rights
- OICT: Office of Information and Communications Technology
- OLA: Office of Legal Affairs
- RoL Unit: United Nations Rule of Law Unit
- UNODC: United Nations Office on Drugs and Crime
- OSAA: United Nations Office of the Special Adviser on Africa
- Youth Envoy: Office of the Secretary-General's Envoy on Youth
- CAC: Office of the Special Representative of the Secretary-General on Children and Armed Conflict

AGENCIES PROGRAMMES FUNDS

- IAEA: International Atomic Energy Agency
- ICAO: International Civil Aviation Organization
- IMO: International Maritime Organization
- IMF: International Monetary Fund
- OPCW: Organization for the Prohibition of Chemical Weapons (OPCW) (1)
- SR on CT & HR: Special Rapporteur on the promotion and protection of human rights while countering terrorism
- UNDP: United Nations Development Programme
- UNESCO: United Nations Educational, Scientific and Cultural Organization
- UNICRI: United Nations Interregional Crime and Justice Research Institute
- UNWOMEN: United Nations Entity for Gender Equality and the Empowerment of Women
- UNWTO: United Nations World Tourism Organization
- WCO: World Customs Organization (WCO) (2/3)
- World Bank
- WHO: World Health Organization

OBSERVERS

- IOM: International Organization for Migration
- OCHA: Office of the Coordinator for Humanitarian Affairs
- DESA: United Nations Department for Economic and Social Affairs
- UNHCR: United Nations High Commissioner for Refugees
- UNAOC: United Nations Alliance of Civilizations

INTERPOL: INTERNATIONAL CRIMINAL POLICE ORGANIZATION

ANNEX 3: ADDITIONAL DOCUMENTS

DPKO: PREVENTING TERRORISM AND VIOLENT EXTREMISM

1. Peace operations are increasingly deployed in environments in which groups, on the basis of extremist ideologies, indiscriminately target peacekeepers, often in pursuit of transnational goals that are inconsistent with the Charter of the United Nations and constitute serious crimes. This has a dramatic impact on United Nations peacekeeping operations.

2. In his Plan of Action to Prevent Violent Extremism, the Secretary-General stressed his intention to integrate the prevention of violent extremism (PVE) into the relevant activities of United Nations peacekeeping operations and Special Political Missions, in accordance with their mandates, in order to build capacity of Member States through such mechanisms as the Global Focal Point arrangement for Police, Justice and Corrections, as well as through SSR and DDR programming.

3. DPKO maintains that peacekeeping is not the right tool for counter-terrorism military/security operations. Nevertheless, there are actions that can be taken by peacekeeping:

a) **Better understanding violent extremism and its impact:** As a matter of priority, DPKO is initiating a policy development project to better understand 'violent extremism' in specific UN peacekeeping situations, its strategic risks, and gaps in existing policy and guidance. Cognisant that an effective understanding of this phenomenon begins with a deeper and nuanced analysis of the anatomy of armed groups, the project will: define peacekeeping principles for engagement in PVE; prepare a report identifying PVE experiences that could be transferred to peacekeeping contexts; document lessons learned and best practices from existing peacekeeping missions operating in violent extremism environments; and develop policy guidance, as required, including mainstreaming prevention in the political and community-level work of peacekeeping operations, as well as developing effective communication strategies.

b) **Adapting our presences and activities:** The DPKO/DFS uniformed capability development agenda aims to equip peacekeeping missions with the capabilities necessary to counter asymmetric threats and tactics, including through better access to intelligence, technology and IED threat mitigation programmes, while improving resilience through greater mobility and medical support capacity. DPKO/OROLSI will conduct a project to develop guidance for field DDR personnel on the disengagement of violent extremist elements. Support is also being sought from the Group of Friends of Corrections to compile international best practices on PVE in prisons.

c) **Building national CT and PVE capacity:** DPKO will initiate a project to develop operational guidance tools in assessing and building CT-PVE capacities of host States through rule of law and security sector programming. This covers security forces preparedness including reinforced community policing and training for counter-terrorism; adoption of legal frameworks and national PVE strategies; and capacity-building of justice actors in investigating and prosecuting terrorism-related offences; prevention of radicalization in prison facilities through static and dynamic security, risk assessments and prison intelligence; support to national C-IED programmes; border management; and mainstreaming CT into SSR programmes. Implemented in coordination with CTED, CTITF, and UNODC, this project will also develop an operational tool to assess host State capacities to deal with PVE and CT and identify gaps where peace operations have the comparative advantage to provide assistance, within their mandates. An expert roster platform in the rule of law and security institutions area will also be developed.

4. In 2015, MINUSMA was identified as a pilot Mission for CT/PVE national capacity building in the areas of rule of law and security. Efforts, in coordination with CTED, CTITF, and other partners, include training and support to national security forces in first response, investigations, forensics analysis, and aspects of C-IED. MINUSMA is also playing a critical role in standing up the Specialized Counter Terrorism Judicial Unit and is supporting the Government's efforts to develop a national border security strategy aimed at preventing the movement of foreign terrorist fighters and proliferation of arms.

CONFERENCE ROOM 1
Third Committee: Plenary

Vote Name:

A/C.3/70/L.46/Rev.1 as orally revised

Human Rights Defenders in the context of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

Yes

117

No

14

Abstain

40

Vote Time: 11/25/2015 11:29:31 AM

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25 Nov. 2015

Y AFGHANISTAN	DOMINICA	Y LITHUANIA	SAO TOME AND PRINCIPE
Y ALBANIA	Y DOMINICAN REPUBLIC	Y LUXEMBOURG	N SAUDI ARABIA
A ALGERIA	A ECUADOR	MADAGASCAR	Y SENEGAL
Y ANDORRA	A EGYPT	Y MALAWI	Y SERBIA
A ANGOLA	Y EL SALVADOR	Y MALAYSIA	SEYCHELLES
Y ANTIGUA AND BARBUDA	EQUATORIAL GUINEA	Y MALDIVES	Y SIERRA LEONE
Y ARGENTINA	A ERITREA	A MALI	Y SINGAPORE
Y ARMENIA	Y ESTONIA	Y MALTA	Y SLOVAKIA
Y AUSTRALIA	Y ETHIOPIA	Y MARSHALL ISLANDS	Y SLOVENIA
Y AUSTRIA	A FIJI	A MAURITANIA	SOLOMON ISLANDS
A AZERBAIJAN	Y FINLAND	Y MAURITIUS	SOMALIA
Y BAHAMAS	Y FRANCE	Y MEXICO	N SOUTH AFRICA
A BAHRAIN	Y GABON	Y MICRONESIA (FEDERATED STATES OF)	Y SOUTH SUDAN
Y BANGLADESH	GAMBIA	Y MONACO	Y SPAIN
Y BARBADOS	Y GEORGIA	Y MONGOLIA	Y SRI LANKA
A BELARUS	Y GERMANY	Y MONTENEGRO	N SUDAN
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Y BOSNIA AND HERZEGOVINA	Y GUINEA-BISSAU	Y NEPAL	A TAJIKISTAN
Y BOTSWANA	Y GUYANA	Y NETHERLANDS	Y THAILAND
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Y CABO VERDE	Y INDONESIA	A OMAN	Y TUNISIA
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N CHINA	Y JAPAN	Y PHILIPPINES	Y UNITED KINGDOM
Y COLOMBIA	Y JORDAN	Y POLAND	A UNITED REPUBLIC OF TANZANIA
A COMOROS	A KAZAKHSTAN	Y PORTUGAL	Y UNITED STATES
A CONGO	N KENYA	A QATAR	Y URUGUAY
Y COSTA RICA	KIRIBATI	Y REPUBLIC OF KOREA	A UZBEKISTAN
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Y CYPRUS	Y LATVIA	Y RWANDA	A YEMEN
Y CZECH REPUBLIC	Y LEBANON	SAINT KITTS AND NEVIS	ZAMBIA
N DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA	Y LESOTHO	Y SAINT LUCIA	N ZIMBABWE
A DEMOCRATIC REPUBLIC OF THE CONGO	Y LIBERIA	Y SAINT VINCENT AND THE GRENADINES	
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